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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner*,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

BRIEF FOR PETITIONER.

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No. 349.

CARLOS M. DE CASTRO, *Petitioner*,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

Certiorari to the United States Circuit Court of Appeals, First Circuit, to Review Judgment Affirming Judgment of Supreme Court of Puerto Rico Staying Execution of Latter Court's Prior Judgment Directing Reinstatement of Petitioner as City Manager.

BRIEF FOR PETITIONER.

OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals, First Circuit, rendered June 14, 1943, to which the present writ is directed, appears in Volume 136, Federal Reporter, 2d Series, beginning on page 419, and in the record on pages 80 to 93.

The opinion of the Supreme Court of Puerto Rico, rendered January 14, 1942, to which the opinion above mentioned directly relates, is not yet officially reported in English, but the English text appears in the record on pages

36 to 46, and the Spanish version is in Volume 59 *Decisiones de Puerto Rico*, beginning at page 676.

The opinion of the District Court of San Juan, rendered August 21, 1939, sustaining the action of the Board of Commissioners in removing the petitioner from office is not officially reported, but may be found in the Transcript of Record filed in this Court in *Board of Commissioners v. de Castro*, No. 94, October Term, 1941, pages 38 to 45.

The original opinion of the Supreme Court of Puerto Rico, rendered June 28, 1940, reversing the District Court of San Juan, and directing petitioner's reinstatement, is reported in Volume 57 *Puerto Rico Reports*, pages 149 to 159, and is in the record on pages 1 to 11.

The opinion of the United States Circuit Court of Appeals, First Circuit, rendered January 10, 1941, affirming the opinion last above mentioned, appears in Volume 116 Federal Reporter, 2d Series, at page 806. Certiorari denied October 13, 1941, 314 U. S. 614.

JURISDICTION.

This Court manifestly has jurisdiction by virtue of Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925 (43 Stat. 938; 28 U. S. C. 347).

This Court granted certiorari on February 28, 1944 (R. 94).

QUESTIONS PRESENTED.

1. Does the rule of the respect to be accorded decisions of Territorial courts on matters of local law require the Circuit Courts of Appeals in reality to abdicate the jurisdiction over appeals from those courts in such cases vested in them by the Congress by the Judicial Code?

2. Is the statutory term of office of the City Manager of San Juan "during good conduct" a term for life pending good conduct, or a term only for a fixed four year period pending good conduct?

3. In this case was not the judgment of the Puerto Rican Supreme Court granting a permanent stay of execution of its prior judgment, which had directed reinstatement of this petitioner, clearly and manifestly erroneous and even "patently" so, and "inescapably wrong", within the meaning of this Court's decision in *Sancho Bonet* v. *Texas Company*, 308 U. S. 463, 471?

STATEMENT OF THE CASE.

Note: As we must refer to both the record filed here in connection with the Respondent Board's unsuccessful petition for certiorari in 1941 (No. 94, October Term, 1941), and that filed in the present proceedings, we shall hereinafter cite the former record as "FR", and the present one as simply "R").

On January 4, 1937, Petitioner Carlos M. de Castro was appointed city manager of the Capital of Puerto Rico (City of San Juan), by the Respondent Board of Commissioners (hereinafter called the Board), pursuant to section 21 of Act No. 99, Laws of Puerto Rico, 1931, page 639, (Appendix A, *infra*, p. 44), which prescribes *inter alia* that the city manager "shall hold office during good conduct" (FR 1, 30).

On November 9, 1938, the Board lodged against the petitioner certain charges comprising nineteen counts of alleged official neglect or misconduct (FR 2-3, 46-54). The petitioner having answered denying both generally and in specific detail each and all of the adverse allegations, hearings on the charges were begun before the Board on November 21, 1938 (FR 4-5, 30).

On January 5, 1939, while its hearings were still in progress, the Board adopted its Resolution No. 370, suspending the petitioner from office pursuant to Section 23 of said Act (FR 4-5, 30; Appendix A, *infra*, p. 45).

On April 5, 1939, after having completed the hearings on February 17, 1939, the Board adopted its Resolution No. 373, sustaining four of the negligence counts, and purporting to remove the petitioner from office effective retroac-

tively to January 5, 1939, pursuant to Section 22 of said Act (FR 6-9, 30; Appendix A, *infra*, p. 44).

On April 11, 1939, the District Court of San Juan granted certiorari (FR 15-16), and after hearing rendered opinion and judgment August 21, 1939, sustaining the Board, dismissing the petition and annulling the writ on the grounds in substance that there was at least some evidence to support two of the counts, and that the Court was without power in such case to set aside the findings or action of the Board (FR 38-46).

Appeal was taken to the Supreme Court of Puerto Rico, where, on June 28, 1940, opinion was rendered holding the removal of the petitioner to have been unlawful (R. 1-11), and judgment was entered as follows (R. 11):

> "For the reasons set forth in the foregoing opinion, the judgment appealed from, which was rendered by the District Court of San Juan on August 21, 1939, is hereby reversed, and in its stead a new one rendered annulling Ordinances No. 370, of January 5, 1939, and No. 373, of April 5, 1939, which decreed the suspension and removal of the City Manager, and, in consequence thereof, ordering the reinstatement of the petitioner, Carlos M. de Castro in his office of City Manager, said reinstatement to date back from January 5, 1939, when the petitioner was suspended from office and pay."

The Board appealed to the United States Circuit Court of Appeals, First Circuit, which on January 10, 1941, affirmed the judgment of the Supreme Court of Puerto Rico. *Board of Commissioners* v. *de Castro*, 116 F. (2d) 806. This Court denied certiorari on October 13, 1941 (314 U. S. 614), and the Circuit Court of Appeals transmitted its mandate to the Supreme Court of Puerto Rico, where it was received on or before October 27, 1941 (R. 37).

Meanwhile, the Board in its brief in the Puerto Rican Supreme Court, not only did not advocate its present theory of a four-year term, but actually took an exactly contrary view, expressly construing Section 21 of Act No. 99 precisely as it has been construed by the present petitioner

throughout these proceedings, to the effect that the office of city manager is one for life pending good behavior, and not one for any fixed term (R. 50), and in its statement on appeal filed in the Circuit Court of Appeals on November 25, 1940, the Board did not make any mention whatever of its present contention that petitioner's term of office was for only four years, although the expiration of that period was then only a few weeks away, and would obviously occur long before the mandate on any final judgment in that court could be received in the Supreme Court of Puerto Rico. Nor was that contention advanced by the Board in either its petition for rehearing filed in the Circuit Court of Appeals on February 10, 1941 (FR 242), some weeks after such expiration, or its petition for certiorari filed in this Court on May 20, 1941 (No. 94, Oct. Term, 1941), more than four months after such expiration.

However, on October 27, 1941, soon after receipt of the mandate by the Supreme Court of Puerto Rico, the Board filed in that Court its motion advancing that contention for the first time in these proceedings, and praying for stay of the execution of the judgment of June 28, 1940, insofar as it provides for reinstatement of the petitioner in the office of city manager, on the alleged ground that petitioner's tenure of that office had expired in January, 1941 (R. 12-18).

The Supreme Court of Puerto Rico, treating the issue thus presented as a new one of mixed law and fact within its original jurisdiction, and taking judicial notice of a few isolated and fragmentary facts as a basis for its conclusion, without affording or being legally empowered to afford the petitioner any opportunity for the presentation of evidence in that Court not subject to judicial notice, proceeded to construe the plain and unambiguous language of Section 21 of the Act providing that the city manager "shall hold office during good conduct", in harmony with the Board's contention, and on January 14, 1942, entered its opinion and judgment accordingly, ostensibly "staying the execution"

of the reinstatement part of its prior judgment of June 28, 1940, but in practical effect striking out the reinstatement provision of that judgment and thus amending it in a vital particular (R. 36-46).

Petitioner's motion for reconsideration having been denied by the Supreme Court of Puerto Rico without further hearing or formal opinion (R. 47-66), appeal was taken to the Circuit Court of Appeals, which rendered on June 14, 1943, the opinion and judgment now before this Court for review, holding in substance that the opinion of the Supreme Court of Puerto Rico is erroneous in every vital particular, but nevertheless affirming the judgment for the sole reason that such affirmance is considered compulsory under the doctrine laid down by this Court in *Sancho Bonet v. Texas Co.*, 308 U. S. 463, 471.

SPECIFICATION OF ERRORS URGED.

The petitioner urges each and all of the errors assigned in his petition for writ of certiorari (p. 8), as follows:

1. The Circuit Court of Appeals erred in holding that under the Puerto Rican Code of Civil Procedure, Section 7, Subdivision 8, the Supreme Court of Puerto Rico could amend its prior judgment of June 28, 1940, so as to interpret the clear context of Article 21 of Act No. 99 of the Legislature of Puerto Rico and limit the petitioner's right to office, from that of tenure during good behavior to a four year term, thereby sanctioning a departure by the Insular Court from well established, accepted and usual judicial proceedings.

2. Though the Circuit Court of Appeals found that the lower court "went beyond the permissible limits of interpretation" in holding that the term of office of the petitioner was that of four years instead of during good behavior, as provided in Section 21 of the Statute, nevertheless, the judgment of the lower court is affirmed because the appellate court was not prepared to hold that such interpretation is "inescapably wrong", notwithstanding that the error of the lower court was clear or manifest and its decision patently erroneous.

3. The Circuit Court of Appeals places an unduly strict, limited and harsh interpretation on the decision in *Sancho Bonet* v. *Texas Co.*, 308 U. S. 463, 471, thereby enjoining all appeals from the Supreme Court of Puerto Rico, which are expressly authorized by Section 128 of the Judicial Code of the United States (28 U. S. C. A. 225), as a matter of right, when the interpretation of, or action under a local Puerto Rico law is involved.

ARGUMENT.

SUMMARY.

I. The Circuit Court of Appeals has erroneously exaggerated the force and effect of the expressions "inescapably wrong" and "patently erroneous" employed by this Court in the *Sancho Bonet* case, *supra*, apparently construing them to bar reversal of the Puerto Rican Supreme Court in any matter of local law where the judgment of that Court, although regarded as erroneous, can be supported on any theory whatever, no matter how strained and illogical; whereas, as petitioner understands, this Court by those expressions meant only to emphasize and not to enlarge the force and effect of its long-established rule and its immediately preceding statement that "to justify reversal in such cases, the error must be clear or manifest." (See Point I, *infra*, p. 8.)

II. The judgment of the Circuit Court of Appeals is erroneous and should be reversed by this Court, because the judgment thereby affirmed (rendered on January 14, 1942, by the Supreme Court of Puerto Rico, holding petitioner's term of office had expired and staying the execution of the reinstatement provision of its prior judgment of June 28, 1940), is clearly and manifestly erroneous—even "patently" so and "inescapably wrong"—within the meaning of the opinion of this Court in the *Sancho Bonet* case, for the following reasons:

A. With relation to the tenure of the office of city manager, Section 21 of Act 99 is too clear and free from ambiguity to admit of the recourse had by the Puerto Rican Supreme Court to extrinsic aids for its interpretation. It obviously means simply what it says, that is, "during good conduct", or in other words, for life subject to possible resignation or removal on notice and hearing for misconduct. See Point II A, *infra*, p. 20.

B. Upon its own theory to the effect that resort to extrinsic aids for the interpretation of said Section 21 with respect to the question of the term of office was justified and necessary, including the consideration of certain factual aspects, the Puerto Rican Supreme Court plainly and manifestly erred still further in undertaking as the case then stood to pass upon that question, and in not remanding the case to the court of first instance, where the question could have been tried and adjudicated in a forum empowered to receive and consider all of the pertinent evidence, not merely the few isolated facts of which judicial notice could be taken. See Point II B, *infra*, p. 24.

C. Even if it should be held that the Puerto Rican Supreme Court did not err manifestly in resorting to extrinsic aids in the interpretation of Section 21, or was not inescapably wrong in so doing, nevertheless that court was plainly, manifestly and inescapably wrong in its reasoning and inferences with relation to each and all of the extrinsic matters considered (especially the isolated facts judicially noticed), as well as in its ultimate conclusion that the section prescribes a term of four years. See Point II C, *infra*, p. 27.

D. The judgment of January 14, 1942, although phrased as a stay of execution, amounts in practical effect to a substantial amendment of the prior judgment in a vital judicial particular, thus exceeding the jurisdiction of the Court. See Point II D, *infra*, p. 36.

POINT I.

The Circuit Court of Appeals erred in holding its appellate jurisdiction over judgments of the Puerto Rican Supreme Court on matters of local law to be "pretty much of a dead letter".

The Circuit Court of Appeals places an unduly strict, limited and harsh interpretation on the opinion of this Court in the case of *Sancho Bonet, Treasurer*, v. *Texas Co.*, 308 U. S. 463, 470-472, and the earlier case of *Sancho Bonet, Treasurer*, v. *Yabucoa Sugar Co.*, 306 U. S. 505, 506-511.

A. The opinion of the Circuit Court of Appeals reflects a misunderstanding by that Court of the decisions of this Court in those and earlier cases with reference to the respect to be paid by the circuit courts of appeals, and by this Court, to decisions of Territorial courts of last resort dealing with local Territorial law.

The Circuit Court of Appeals has further reflected its misunderstanding of this Court's decisions in those cases by the adoption of a rule of practice,—its "Rule 39(b)," adopted in the revision of its rules effective September 20, 1940, nine months after this Court's decision, January 2, 1940, in *Sancho Bonet, Treasurer*, v. *Texas Company, supra*. A copy of that Rule 39(b) is in the margin.[6]

THE RULE IN QUESTION.

[6] Rule 39(b) of the First Circuit Court of Appeals, adopted in the Revision of that Court's Rules effective September 20, 1940,—nine months after this Court's decision, January 2, 1940, in *Sancho Bonet, Treasurer*, v. *Texas Company*, 308 U. S. 463, 470-472,—reads as follows:

> "(b) In appeals from the Supreme Court of Puerto Rico involving only questions of local law the appellant shall be required to show in his statement on appeal that the judgment appealed from is 'inescapably wrong' or 'patently erroneous'. (*Sancho Bonet* v. *Texas Co.*, 308 U. S. 463 (1940)). The court will entertain a motion by the appellee to affirm on the ground that it is manifest from the record and the statement on appeal that the judgment below was neither 'ines-

This Court did not in the *Sancho Bonet* v. *Texas Company* case, or in the *Sancho Bonet* v. *Yabucoa Sugar Company* case, indicate any intention to change in any way the rule in that respect that had been unvaryingly recognized and enforced by this Court for more than sixty years previously, alike in cases coming from the old Territories within the continental United States, and also since 1898, from Hawaii, the Philippines, and Puerto Rico.

B. The positive and emphatic language of this Court in the *Sancho Bonet* v. *Texas Company* case, *supra*, 308 U. S. 463, 470-472, is to be read in connection with all the surrounding circumstances of that case, and with this Court's opinions in the *Yabucoa Sugar Company* case and the other cases.[7]

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capably wrong' nor 'patently erroneous', and consequently should not be disturbed by this court. Such motion, which may be united in the alternative with a motion to dismiss the appeal, may be filed within twenty days after the filing and serving of the statement on appeal. A brief in support thereof may be filed and furnished in the manner specified by Rule 25. The court may, however, upon its own motion, dismiss the appeal or affirm the judgment appealed from where the law and justice of the case so require; or, if the case is of such character as not to justify extended argument, the court may order the cause set down for immediate hearing."

[7] *Confer: Sweeney* v. *Lomme*, *supra*, 22 Wall. 208, 213; *Northern Pacific R. R. Co.* v. *Hambly*, 154 U. S. 349, 361; *Fox* v. *Haarstick*, 156 U. S. 674, 679; *Armijo* v. *Armijo*, 181 U. S. 558, 560-561; *Copper Queen Consol. Min. Co.* v. *Territorial Board of Equalization*, 206 U. S. 474, 479; *Lewis* v. *Harrea*, 208 U. S. 309, 314; *English* v. *Arizona*, 214 U. S. 359, 361; *Santa Fe County* v. *New Mexico*, 215 U. S. 296, 305; *Albright* v. *Sandoval*, 216 U. S. 331, 339; *Lewers & Cooke* v. *Atcherly*, 222 U. S. 285, 294; *Treat* v. *Grand Canyon R. R. Co.*, 222 U. S. 448, 452; *Ker & Co.* v. *Couden*, 223 U. S. 268, 279; *Clason* v. *Matko*, 223 U. S. 646, 653; *Gray* v. *Taylor*, 227 U. S. 51, 57; *Cordova* v. *Folgueras*, 227 U. S. 375, 378-379; *Phoenix R. R. Co.* v. *Landis*, 231 U. S. 578, 579-580; *Santa Fe C. R. Co.* v. *Friday*, 232 U. S. 694, 700; *Nadal* v. *May*, 233 U. S. 447, 454; *Villanueva* v. *Villanueva*, 239 U. S. 293, 298-299; *Diaz* v. *Gonzalez*, 261 U. S. 102, 105-106; *Fernandez* v. *Ayllon*, 266 U. S. 144, 146; *Matos* v. *Alonso Hermanos*, 300 U. S. 429, 432; *Waialua Co.* v. *Christian*, 305 U. S. 91, 109; *Inter-Island Co.* v. *Hawaii*, 305 U. S. 306,

In that *Texas Company* case the Texas Company had brought an action in a Puerto Rican insular District Court to enjoin the Treasurer of Puerto Rico, Rafael Sancho Bonet, from enforcing by distraint orders of the Puerto Rico Workmen's Relief Commission awarding compensation for the deaths of three laborers while in the company's employ. The Supreme Court of Puerto Rico interpreted the local Workmen's Compensation Act as not permitting such a collateral attack by injunction on orders of the Commission, and affirmed the District Court's judgment dismissing the bill. (52 P. R. Dec. 658; 53 P. R. Dec. 475; 52 P. R. Rep. 637; 53 P. R. Rep. 452.) On appeal the Circuit Court of Appeals for the First Circuit vacated that judgment and remanded the cause with directions to issue the injunction [102 F. (2d) 710]. This Court granted *certiorari* because (308 U. S., *supra*, at p. 465),

> "of the asserted violation by the Circuit Court of Appeals of the well established rule that Puerto Rican tribunals must not be overruled on their construction of local statutes in absence of 'clear or manifest error'. *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505; 307 U. S. 613."

This Court reviews (at pp. 465-470) the opposite positions in that case of the two Courts,—the insular Supreme Court on the one hand, and the Circuit Court of Appeals on the other hand, and concludes (pp. 471-472):

> "In concluding that under Section 9 an uninsured employer could have an award of the Commission reviewed, including the issue of whether or not he was insured, the Supreme Court of Puerto Rico did not take a patently absurd position. The most that can be said is that the contrary position is a tenable one. In holding that the amendments substituted collection by the

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311; *all leading up to the emphatic statement of the same rule in Sancho Bonet, Treasurer* v. *Yabucoa Sugar Co., supra*, 306 U. S. 505, 509-511; *and in Sancho Bonet, Treasurer* v. *Texas Co., supra*, 308 U. S. 463, 470-472, and afterwards in *People of Puerto Rico* v. *Rubert Hermanos, Inc.*, 315 U. S. 637, 646.

Attorney General even in case of pending claims, that tribunal did not commit manifest error. The conclusion that the latter procedure survived the amendments is merely another possible view. And the decision of that tribunal that the petitioner had the power to distrain cannot be said to be inescapably wrong in view of the legislative design to leave no *hiatus* in the statutory scheme as a result of cumulative amendments. The contrary conclusion, though it might seem wholly reasonable, would not warrant a reversal."

Under those circumstances, and coming to those independent conclusions on the merits of the case, this Court took occasion to repeat and re-emphasize the rule, which it had been announcing from time to time for more than sixty years, of the respect to be accorded to the decisions of Territorial courts on local matters. It said (*ib.*, pp. 470-471):

"For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong. From *Sweeney* v. *Lomme*, 22 Wall. 208, decided in 1874, to *Bonet* v. *Yabucoa Sugar Co., supra*, decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy. As this court recently stated, 'Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island.' *Bonet* v. *Yabucoa Sugar Co., supra*, p. 510.

"We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several

possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous.

"Measured by such a test the judgment of the Supreme Court of Puerto Rico should not have been reversed."

C. The *Yabucoa Sugar Company* case (*Sancho Bonet, Treasurer* v. *Yabucoa Sugar Co., supra*, 306 U. S. 505) was another case where this Court carefully considered the case on its merits and really determined that the Circuit Court of Appeals was wrong, and that the Supreme Court of Puerto Rico was right, wholly independently of the question of the respect to be accorded to a decision of a Territorial court of last resort.

That was a suit against the Treasurer of Puerto Rico for a tax refund of taxes that had been paid voluntarily and without protest. This Court notes (at p. 506): "By construction of the local Puerto Rican statutes permitting suits for refunds, the local District Court found that no right had been granted to sue at law for taxes voluntarily paid". The District Court's consequent dismissal of the bill was affirmed by the Supreme Court of Puerto Rico, but was reversed by the Circuit Court of Appeals by a divided Court [98 F. (2d) 398, 400, 403], each of the three Circuit Judges handing down his own separate opinion, two of them concurring in the result, but the third dissenting. This Court's opinion carefully examines the complicated local tax statutes involved, and concludes that the plaintiffs were not entitled to recover the refund for these taxes thus voluntarily paid,—that is, that the insular Supreme Court's decision was right, and that the majority opinion of the Circuit Court of Appeals was wrong (at pp. 506-509).

Having thus independently come to this conclusion, this Court then in this *Yabucoa Sugar Company* case (at pp. 509-511) proceeded,—as it did afterwards in the *Sancho*

Bonet v. *Texas Company* case, *supra*,—again to call attention to the applicability in Puerto Rico of its long standing rule of the respect to be accorded to decisions of local Territorial courts of last resort in local territorial matters, saying:

> "And this Court has declared its unwillingness to overrule Puerto Rican tribunals upon matters of purely local concern or to decide against the local understanding of a local matter, not believed by this Court to be clearly wrong; and a disposition to accept the construction placed by a local court upon a local statute and to sustain such a construction in the absence of clear or manifest error.
>
> "Taxing acts of Puerto Rico are purely local and the traditional reluctance of this Court to overturn constructions of such local statutes by local courts is particularly applicable to interpretations of Puerto Rican statutes by Puerto Rican tribunals. Orderly development of the governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island.
>
> "The judgments of the Puerto Rican courts in this case are not unsupported by logic or reason." * * *.
>
> "In passing upon a previous construction of a Puerto Rican statute by the Supreme Court of Puerto Rico, this Court said, 'The construction adopted in Porto Rico at least does no violence to the words of the statute; it concerns local affairs under a system with which the court of the Island is called on constantly to deal, and we are not prepared, as against the weight properly attributed to the local decision to say that it is wrong'.[8] So here, we cannot say the Puerto Rican courts were wrong. In failing to uphold their construction of the local statutes, the Circuit Court of Appeals was in error."

D. Earlier cases in which this Court had enunciated this rule are collected in the margin, as above indicated (Foot-

[8] Citing (in its footnote 19) *Cordova* v. *Folgueras*, *supra*, 227 U. S. 375, 378, 379.

note 7, *ante*, p. 10); and a few of the cases in which it has been cited by circuit courts of appeals are in the margin here.[9]

A memorandum of these various cases in this Court is in Appendix F, *infra*, pp. 63-78.

E. Examination of all of these cases shows that this Court has never failed fully to examine every case coming to it within its statutory jurisdiction from any Territorial court. And has never indicated any understanding that its rule, consistently enunciated over the years, for some seventy years now,—ever since 1874,—of the respect to be accorded to decisions of local Territorial courts on local matters, meant that this Court, or the circuit courts of appeals, should abdicate the statutory jurisdiction vested in them by the Congress to review judgments of the Territorial courts, or should so far subordinate their own independent opinions to those of the Territorial courts, even on local Territorial matters, as to subscribe to any decision they considered wrong.

F. The statutes of the Congress vesting the jurisdiction in this Court and in the Federal Courts of Appeals are enacted pursuant to the Constitutional plenary power vested in the Congress by Article IV, Section 3, Clause 2, of the Constitution, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States", under which all of the Territorial courts,—and indeed the entire Territorial governments,—are but the agencies of the Congress and wholly subject to its will.

This rule is only that, in cases presenting two or more practical solutions of a local problem, where the

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[9] *Confer: Richardson* v. *Fajardo Sugar Co.*, 237 Fed. 195, 196; *Loiza Sugar Co.* v. *People of Puerto Rico*, 57 F. (2d) 703, 706; *Porto Rico Coal Co.* v. *Domenech*, 41 F. (2d) 183, 185-186; *Russell & Co.* v. *Sancho Bonet, Treasurer*, 92 F. (2d) 821, 822; *Hawaii Consol. Co.* v. *Borthwick*, 105 F. (2d) 286, 288; *Walker* v. *O'Brien*, 115 F. (2d) 956, 957.

Territorial court has arrived at a solution "not unsupported by logic or reason",[10] it is not to be overturned, in view of the respect properly to be accorded to the decisions of local courts upon matters primarily of purely local concern.

G. That is the rule to be deduced from an examination of all of the cases, collected in Appendix F (*infra*, pp. 63-78), in which this Court has had occasion to enunciate the rule, over the past seventy years.

As it is phrased in the last of those opinions, "the decisions of the courts of Puerto Rico with respect to the interpretation of the Island's statutes and to matters of local law are to be accorded the greatest weight"; and are not to be overturned in a case where (*People of Puerto Rico* v. *Rubert Hermanos, Inc.*, 315 U. S. 637, 645),

> "We cannot say that an interpretation placed by the Supreme Court of Puerto Rico upon statutes whose meaning is so open to doubt is plainly incorrect. Accordingly, though the interpretation suggested by the Circuit Court of Appeals may be equally plausible, it erred in reversing the judgment of the insular court."

H. As above indicated, the Circuit Court of Appeals, in the present case, has misinterpreted this rule and has so misunderstood it as to consider that this Court has in effect deprived it of the statutory jurisdiction vested in it by the Congress over appeals from the Territorial courts by Section 128-(a)-Fourth of the Judicial Code.

The Circuit Court of Appeals, in its opinion in the present case, definitely determines and expresses its opinion that the insular Supreme Court was wrong in holding that the term of office of the petitioner De Castro, as City Manager of San Juan, was not for life, subject only to removal in case of failure in good conduct, but was only for a four-year term, and saying (R. 91; 136 F. (2d) 419, 425 "[6]"):

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[10] *Sancho Bonet* v. *Yabucoa Sugar Co.*, *supra*, 306 U. S. at p. 510.

"If we were free to take a wholly independent view of the point at issue we would be inclined to conclude that the meaning of section 21 is clear, and that the court below went beyond the permissible limits of interpretation in reading the clause 'and shall hold office during good conduct' as meaning that 'the tenure of office of the city manager of the capital is that of four years, providing that during the same he observe good behavior'."

But then the Circuit Court goes on to quote from this Court's emphatic enunciation of this rule in the *Sancho Bonet* v. *Texas Company* case (308 U. S., at p. 471, *supra*), and says (R. 91-92; 136 F. (2d), at p. 425 "[7]"):

"We are not prepared to say that the judgment now under review is 'inescapably wrong.' For many years this court has not had much luck in reversing the Supreme Court of Puerto Rico on questions of local law. As we pointed out in *de la Torre* v. *National City Bank*, 110 F. (2d) 976, 983 (1940), 'though Congress has given us appellate jurisdiction over the Supreme Court of Puerto Rico in matters of local law where the value in controversy exceeds $5,000, the exercise of this jurisdiction is so restricted by the canon prescribed by the Supreme Court of the United States that appeals in such cases are likely to be futile and merely to cause needless delay and expense'."

"It may be pointed out that our function in this class of cases, technically, at least, is different from that of the Supreme Court of the United States upon review of decisions of state courts: There, the Supreme Court has no appellate jurisdiction in matters of state law, and hence it accepts as conclusive the decisions of the state tribunals in matters of local law. But Congress has given us, and the Supreme Court of the United States upon *certiorari*, appellate jurisdiction over the Supreme Court of Puerto Rico in matters of local law where the jurisdictional amount is involved. It may well be that as a matter of legislative policy we ought not to have this jurisdiction; the present case is a good example, involving as it does a political matter of strictly local concern in San Juan, Puerto Rico. But as the law now stands litigants bring these cases to us

> as a matter of right, and we have to pass on them. It is a bit humiliating to this court to be obliged to act practically as a rubber stamp, or else to be reversed by the Supreme Court of the United States."

I. *This is a plain misunderstanding of this Court's rule*, as it has been enunciated over all the years, as above indicated.

J. *The Circuit Court of Appeals misunderstands the rule in another respect also. It understands the rule to apply only to the so-called "insular courts"* in Puerto Rico,—particularly to the Supreme Court of Puerto Rico, as the court of last resort of that "insular" system,—*but not to apply to the so-called "federal court"*, "the District Court of the United States for Puerto Rico"; although that so-called "federal court" is likewise simply a Territorial court,—a Congressional court,—equally with the so-called "insular courts". It is recognized and established by Section 41 of the same Organic Act of the Congress for Puerto Rico of March 2, 1917 [39 Stat., c., 951, 965], by the immediately next preceding Section 40 whereof the so-called "insular courts",—including the Supreme Court of Puerto Rico,—are likewise recognized and established.

The so-called "federal court", thus established, is not a true United States Constitutional court, but is only a Congressional court (*Romeu* v, *Todd*, 206 U. S. 358, 368; *Balzac v. People of Puerto Rico*, 258 U. S. 298, 312), equally with the so-called "insular courts", and deriving its authority from the same sources, *viz.*, from the authority of the Act of the Congress, under the grant of plenary power to the Congress by Article IV, Section 3, Clause 2 of the Constitution,

> "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States",

under which the entire Puerto Rican judicial system,—so-called "insular" and so-called "federal" courts alike,—and

indeed the entire insular Territorial government,—is but an agency of the Congress, deriving all of its powers and authority of every kind solely from the Congressional Act, under that Constitutional power (*Romeu* v. *Todd, supra*; *United States* v. *Heinszen & Co.*, 206 U. S. 370, 386, *et seq.*; *Rafferty* v. *Smith Bell & Co.*, 257 U. S. 226, 232; *Inter-Island Navigation Co.* v. *Hawaii*, 305 U. S. 306, 314); *Porto Rico Brokerage Co.* v. *United States*, 80 F. (2d) 521, 524, *certiorari* denied, May 18, 1936, 298 U. S. 671.

The Circuit Court of Appeals says (R. 92; 136 F. (2d) at p. 425):

> "Incidentally, we have two lines of appellate jurisdiction from Puerto Rico, one from the United States District Court for Puerto Rico, and the other from the Supreme Court of Puerto Rico. 28 U. S. C. See. 225. Appeals from the District Court may involve questions of local Puerto Rican law";

and then the Court proceeds, *mistakenly*, to say (*ib.*, R. 92, *immediately following the preceding quotation*):

> "so far as we know, the 'inescapably wrong' rule has never been applied in such cases."

K. The Court is mistaken in that belief.

One of the most frequently cited cases, illustrative of the rule in question, came, in fact, from that very same federal District Court of Puerto Rico, *viz.*, the case of *Nadal* v. *May*, 233 U. S. 447, in which Mr. Justice Holmes (at p. 454) invited attention to this rule of:

> "the general unwillingness of this Court to overrule the local tribunals upon matters of purely local concern" (*Confer*, Appendix F, *infra*, p. 72).

There is no logical reason for any distinction in the application of the rule, as between the two classes of Territorial Congressional courts in Puerto Rico; and no such distinction has been made by this Court.

L. It follows that the Circuit Court of Appeals, plainly considering, as it did, that the insular Supreme Court was wrong in its decision in this case on the merits, should have so decided; and that the Circuit Court of Appeals was itself in error in thus abdicating its judicial functions because of its misunderstanding and misapplication of this Court's enunciations of this rule, and in mistakenly, because of that misunderstanding, failing to reverse the insular Supreme Court's decision, as it plainly should have done.

POINT II A.

With relation to the term or tenure of the office of city manager, Section 21 of Act No. 99 is too clear and free from ambiguity to admit of the recourse had by the Puerto Rican Supreme Court to extrinsic aids for its interpretation as prescribing a four-year term.

The section reads (Appendix A, *infra*, p. 44):

> "Section 21—The City Manager shall be the chief executive of the Capital: he shall be appointed by the Board of Commissioners created by this Act *and shall hold office during good conduct.*" (Italics ours.)

The meaning of a statutory provision is what was intended by the legislature, and the first and best criterion for ascertaining that intent is the language of the enactment. Where the language is clear and free from ambiguity there is no room for labored construction, and the courts simply apply and enforce the Act according to the ordinary sense of its plain terms. These principles are fundamental. *Caminetti* v. *United States*, 242 U. S. 470, 485. An equally well settled corollary is that courts, having no legislative power, cannot rightly read into a statute anything not expressly stated, or reasonably implied by its terms.

> "There is a marked distinction between liberal construction of statutes, by which courts, from the language used, the subject matter, and the purposes of those framing them, find out their true meaning, and

the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The former is a legitimate and recognized rule of construction, while the latter is judicial legislation, forbidden by the constitutional provisions distributing the power of Government among three departments, the legislative, the executive and the judicial." *Chase* v. *Swayne*, 88 Tex. 218, 225, 30 S. W. 1049, 1052.

And this Court has said with relation to acts of Congress:

"The responsibility for the justice or wisdom of legislation rests with the Congress, and it is the province of the courts to enforce, not to make the laws." *United States* v. *First National Bank*, 234 U. S. 245, 260.

However, the fact remains that where a statute is ambiguous, the courts may resort to available and proper extraneous aids for its interpretation, and in the present instance the Puerto Rican Supreme Court adopted that view. The question immediately presented is whether that view is right or clearly and manifestly wrong, and the answer depends on the legislative intent as evidenced primarily by the language of the Act. In other words, is the meaning of the italicized clause in Section 21 as above quoted, "and shall hold office during good conduct", so doubtful as to warrant the courts in looking beyond the text of the section, or perhaps even the Act, for external evidences of the legislative intent concerning the term or tenure of office of the city manager?

Each of the intermediate appellate courts has noted in substance (R. 39, 87), that the phrase "during good conduct", as it appears in the statutory provision under consideration, is taken almost *verbatim*—certainly in precisely equivalent words—from Section 1, Article III, of the Federal Constitution, providing:

"The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior

> courts as the Congress may from time to time ordain, and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office".

That the phrase "during good behavior", as employed in the above quoted section of the Constitution, clearly confers life tenure, subject, of course, to possible resignation or impeachment, has never been questioned.

In his work on the Constitution, Storey devotes many pages to discussion supporting the wisdom of the policy of life tenure for Federal judges, apparently assuming that no question arises as to their possession of such tenure. Storey on the Constitution, Fifth Edition, Volumme 2, sections 1600 to 1627, pages 416 *et seq.*

In a footnote, Storey refers to the judgment of Lord Holt in *Harcourt* v. *Fox*, 1 Showers Reports 426, English Reports (Reprint), Vol. 1, pp. 107, 111 (1693) for a definition of "good behavior". Harcourt held the office of Clerk of the Peace for Middlesex, under an appointment by letters patent from the Earl of Clare, describing the tenure as "for so long a time only as he well demeans himself therein". Lord Holt held in substance that Harcourt could be removed only for "misbehavior", and by implication that this meant misconduct in connection with his official duties.

Speaking for the Court in the early case of *Martin* v. *Hunter's Lessee*, 14 U. S. (1 Wheat.) 304, 308, Mr. Justice Storey, after quoting pertinent parts of section 1, Article III of the Constitution, said:

> "Could Congress create or limit any other tenure of the judicial office? Could they refuse to pay, at stated times, the stipulated salary, or diminish it during the continuance in office? But one answer can be given to these questions: it must be in the negative."

Again this Court held to the same effect in *Ex Parte Hennen*, 38 U. S. (13 Pet.) 225, 258-259 (1839), in an

opinion never challenged as to that particular in this or any other appellate court, and tacitly reaffirmed in *Shurtluff* v. *United States*, 189 U. S. 311, 316. See also *Smith* v. *Bryan*, 110 Va. 199, 203; 40 S. E. 652, 653. In the present case, the soundness of that interpretation was accepted by both the Puerto Rican Supreme Court (R. 39), and the Court of Appeals (R. 87).

A further strong indication that the Puerto Rican Legislature, in its choice of language in said Section 21, did not mean anything more or less than it said, and particularly did not intend that section to be construed as prescribing any term of years corresponding to that of the five commissioners to be elected at the general elections in and following 1936, lies in the fact that the Act prescribed no such four-year term for any majority of the Commissioners to be appointed to serve during the five years and some months prior to the inauguration of those elected in 1936. See pertinent provisions of the Act in Appendix A, *infra*, pp. 43-46. In short, for the period last mentioned, there was no four-year term to which, on the theory of the Puerto Rican Supreme Court, the term of the city manager could have been related as to that of a majority of the members of the appointing authority, and from which that Court reasoned that the Legislature intended to prescribe a corresponding term for the city manager. The Court of Appeals wisely remarked in this connection, "It is difficult for us to see how Section 21 could mean anything different in 1937, and thereafter, from what it meant in 1931, when the new form of government was constituted." Statutes are to be construed according to conditions as they stood at the times of their enactment. *Platt* v. *Union Pacific R. R. Co.*, 99 U. S. 48, 63. The fact seems to be that Mr. Benítez Castaño, the first city manager, petitioner's predecessor in that office, who apparently assumed office September 11, 1931, served therein until his resignation took effect early in 1937, more than five years later (Resolution No. 243 of the Board of Commissioners, Sept. 16, 1936, Appendix B, *infra*, pp. 47-49).

As we find nothing in Section 21 nor elsewhere in Act 99, in conflict with the literal terms of the tenure provision of that section, or which by any reasonable stretch of the imagination can be construed as making or implying any modification or qualification thereof, we must conclude that the provision is entirely clear and free from ambiguity, that it means simply what it says, namely that the city manager "shall hold office during good conduct", that any resort to extrinsic aids for the purpose of giving it a different construction is wholly unwarranted, and that the Puerto Rican Supreme Court was manifestly and inescapably wrong in holding otherwise.

For a more detailed discussion of the various extrinsic aids utilized by the Puerto Rican Supreme Court, see Point II C, *infra*, p. 27.

POINT II B.

Upon its own theory to the effect that resort to extrinsic aids for the interpretation of said Section 21 with relation to the question or term or tenure of office was justified and necessary, including consideration of certain factual aspects not apparent in the record, the Puerto Rican Supreme Court plainly and manifestly erred in undertaking, as the case then stood, to pass upon that question, and in not remanding the case to the trial court where the new issue could have been tried and adjudicated in a forum empowered to receive and consider all competent evidence, not merely the few isolated facts of which judicial notice could be taken.

With relation to this case, the Puerto Rican Supreme Court is an appellate court by statute empowered only to review the judgment of the trial court upon the record on appeal submitted according to law, and expressly forbidden otherwise to undertake the determination of matters of fact.

Section 1 of the Act of the Puerto Rican Legislature, approved March 12, 1903 (Laws of P. R., 1903 p. 59), provides:

> "Section 1.—That the Supreme Court of Porto Rico shall hereafter be a Court of Appeals and not a Court of Cassation. In its deliberations and decisions, in all cases, civil or criminal, said court shall not be confined to the errors in proceeding (procedure) or of law only, as they are pointed out, alleged or saved by the respective parties to the suit, or as set fourth (forth) in their briefs and exceptions, but in furtherance of justice, the court may also take cognizance of all the facts and proceedings in the case as they appear in the record, and likewise consider the merits thereof, so as to promote justice and right and to prevent injustice and delay."

Chapter II, Title XII, Code of Civil Procedure of Puerto Rico (1933), entitled "Appeals to Supreme Court from District Court", after providing for the initiation, perfection and dismissal of such appeals, prescribes further in Sections 305 and 306 as follows:

> "Section 305—(956 Cal.) Upon an appeal from a judgment, the court may review the decision, and any intermediate order or decision, if excepted to, which involves the merits, or necessarily affects the judgment; except a decision or order from which an appeal might have been taken."

> "Section 306.—(958 Cal.) (As amended by Act of March 8, 1906, page 164.)—When the judgment, order or decree of the court below shall be reversed, the court shall proceed to render such judgment, order or decree as the court below should have rendered, except when it is necessary that some matters of facts be ascertained, or the damage to be assessed or the matter to be decreed is uncertain, in any of which cases the cause shall be remanded for a new trial in the court below."

With rare exceptions, none of which militates against our position on this point, an appellate court is not empow-

ered to entertain and determine questions either of law or fact not brought before it upon the record sent up from the trial court. The principle is well stated in 4 Corpus Juris Secundum, Section 228, as follows:

> "Subject to a few exceptions, the rule is of almost universal application, in many jurisdictions by virtue of express statutory provision, that questions of whatever nature not raised and properly preserved for review in the trial Court, will not be noticed on appeal." *Isenberg* v. *Sherman*, 212 Cal. 454, 299 P. 528; *Smith* v. *Lewis*, 211 Cal. 294, 295 P. 37; *Rafferty* v. *City of Marysville*, 207 Cal. 657, 280 P. 118. "* * * While the reason for the rule is supportable upon a number of considerations, it is usually placed upon the ground that the opposite party should have the proper opportunity to avoid, by amendment or by supplying any defects in his proof, the effect of the objection" *Jones* v. *Seymour*, 95 Ark. 593, 130 S. W. 560.

And the California Court of Appeals under a Code of Civil Procedure from which that of Puerto Rico is taken, has held that in the absence of special statutory authority, an appellate court is limited to a review of such questions as are presented by the record, or by reasonable inference therefrom, as of the time when the appeal is taken. *Laam* v. *McLaren*, 28 Cal. App. 632, 153 P. 985.

It may be argued in this connection that one of the exceptions to the general rule last cited arises where the question is one of public importance (4 Corpus Juris Secundum, Section 242), and that the present case falls within that exception because the question whether the city manager of the Capital of Puerto Rico has a life tenure or only a term of four years is one of manifest general interest and importance to the people of that City, and no doubt to the people of Puerto Rico generally. We freely concede the public importance of the question, but can perceive no reason why that consideration should be regarded as ground for depriving the petitioner of a full constitutional hearing on the issue presented. On the contrary, if the holding of

the Puerto Rican Supreme Court that the statute is ambiguous and needs the light of extrinsic facts for its interpretation is upheld, then it seems obvious that the public interest will benefit rather than lose by a deliberate and thorough judicial examination of the question, with opportunity on both sides to be heard fully as to both the factual and the legal aspects.

We conclude that the Puerto Rican Supreme Court plainly and manifestly erred not only in holding Section 21 to be ambiguous, but then further even under that view in assuming to pass upon the question of tenure as one of mixed law and fact, and in failing to remand the case to the District Court for trial and determination of that issue.

POINT II C.

Even if it should be held that the Puerto Rican Supreme Court did not err manifestly in resorting to extrinsic aids for the interpretation of Section 21, or was not inescapably wrong in so doing, nevertheless that court was plainly, manifestly and inescapably wrong in its reasoning and inferences with relation to each and all of the extrinsic matters considered (especially the isolated facts judicially noticed), as well as in its ultimate conclusion that said section prescribes a term of four years.

The soundness of the foregoing caption is, we believe, fully borne out by the pertinent comments of the Circuit Court of Appeals, and by other considerations hereinafter set forth. For the convenience of this Court we quote *seriatum* below the parts of the opinion of the Circuit Court of Appeals, dealing with the various external matters considered by the Puerto Rican Supreme Court, followed in each instance by our remarks.

(1) *Shurtleff Case.*

The Circuit Court of Appeals says (R. 87-88):

"(1) Life tenure for public officers is the exception; hence should not be read into the statute by implication

but only if the intention of the legislature to that effect appears to be so evident as to permit of no doubt. This is an accepted canon of construction, for which the court properly cites *Shurtleff* v. *United States,* 189 U. S. 311 (1903). That case involved the tenure of the office of general appraiser of merchandise. It was provided in the act creating the office that the appraisers should be appointed by the President with the advice and consent of the Senate and might be removed from office at any time by the President for inefficiency, neglect of duty or malfeasance in office. Beyond [fol. 92] that the statute was silent as to the tenure of the office. The court held that Congress had not clearly enough indicated an intention to make the tenure one for life subject only to removal for cause; and therefore that the act should be construed as leaving unrestricted the President's implied power of removal without cause. But the significant thing is that the act there involved did not provide that appraisers should hold office 'during good behavior'. The court pointed out (p. 316) that 'The tenure of the judicial officers of the United States is provided for by the Constitution, but with that exception no civil officer has ever held office by a life tenure since the foundation of the government'. How is the life tenure of judicial officers provided for in the Constitution except by the phrase that they shall hold office 'during good behavior'? The rule of interpretation laid down in the *Shurtleff case,* where the act in question did not use the phrase 'during good behavior', should not be used to create an ambiguity in Section 21 of the act now before us, where the legislature describes the tenure simply as 'during good conduct'."

Our Comments. The distinction thus pointed out is conclusive. The *Shurtleff* case obviously affords no authority whatever for holding that Section 21 of Act No. 99 is ambiguous, or for reading into that section an implied intent on the part of the Legislature to prescribe any term of years for the office of city manager.

(2) *So-called anomalies.*

The Circuit Court of Appeals says (R. 88-89):

> "(2) The court points to the 'anomaly' which would result if the city manager were held to have a life tenure, from the fact that the treasurer, the director of public works, etc., might, under Section 26 be appointed 'for a limited term to be fixed by the city manager,' while an employee attached to the office of the city manager, 'for example, the messenger of his office, by the mere fact of being appointed by the city manager would hold his employment for life unless removed for just cause.' Along the same line, the court states that an uncalled for discrimination would be created between the employees appointed by the other officers and the employees appointed by the city manager, 'as the former would hold their employments during the tenure of the appointing officer whlie the term of office of [fol. 93] the employees appointed by the city manager would be for life.' But these 'anomalies,' if such they be, are relevant only if it is assumed that there is doubt or ambiguity as to the meaning of Section 21."

Our Comments. It is true that the sections of Act No. 99 dealing with the appointment and tenures of the various municipal officers and employees other than the city manager are not entirely clear. How those parts of the Act would be construed upon a proper judicial examination is doubtful in many respects. Whether, in event the city manager is held to have a life tenure, the employees appointed by him will likewise hold their places for life, subject to removal only for misconduct, is problematical and speculative. That question is not properly at issue in this case, and has not been given the time or attention by courts or counsel essential to its well considered determination.

However, assuming, without conceding, that the discriminations in terms of office suggested by the Puerto Rican Supreme Court would necessarily result from a decision that the term of office of the city manager is for life,

it does not logically follow that those discriminations were not deliberately intended by the Legislature as part of its obvious original plan to take the office of city manager very largely out of partizan politics, including perhaps the municipal employees appointed by that officer. If such was the legislative purpose we may find close parallels in the civil service laws and regulations of the United States and many of our states and municipalities, providing for some but not all of their officers and employees what amounts to or very closely approximates a life term, subject to removal only on notice and hearing for misconduct.

So, the Circuit Court of Appeals following its reference, in the last sentence of the last foregoing extract of its opinion, to the "anomalies", quite properly inserted the qualifying words, "if such they be". There is, in our opinion, no showing in the opinion of the Puerto Rican Supreme Court or elsewhere in the record, that any anomaly or incongruity results from interpretation of Section 21 according to the ordinary sense of its plain terms.

(3) *Administrative Construction.*

The Circuit Court of Appeals says (R. 89-91):

> "(4) The court refers to the rule that in cases of doubt 'the practical construction given to a statute by public officials and acted upon by the people' will be regarded as decisive. In this connection the court took judicial notice of the facts that at the general elections held in 1936 and 1940 the various political parties had indicated to the electorate in advance their respective choices for city manager, and that when the newly elected commissioners took office the board proceeded to appoint as city manager the candidate of the successful political party. Appellant objects that the court below ought not to have taken judicial notice of these facts; that he had no opportunity to put in evidence other facts or explanations which would rob the judicially noticed facts of their significance, and thereby he was denied due process of law. But it is clear that

an appellate court may take judicial notice of public acts and facts of common knowledge bearing on a doubtful issue of statutory construction. If the court below took judicial notice of some fact that wasn't so, appellant, on appeal to us, by reference to official records or in some other appropriate way, could [fol. 94] bring the true situation to our notice, and we in our turn, taking judicial notice of the relevant facts, could review any error in statutory interpretation committed by the court below as the result of a misapprehension of the facts judicially noticed by it. Appellant, however, has not undertaken to enlighten us on these matters. Indeed, appellant does not deny the fact, as stated by the court below, that appellant himself was the preannounced choice for city manager of the winning party at the general elections of 1936. And there seems to be no doubt of the further fact, stated by the court below, that when the newly elected commissioners came into office on January 4, 1937, they proceeded at once to appoint appellant as city manager."

Our Comments. Referring to the statement of the Circuit Court of Appeals that an appellate court may take judicial notice of public acts and facts of common knowledge bearing on a doubtful issue of statutory construction, this is a correct statement of a general rule, but its application in Puerto Rico is restricted by Section 398 of the Puerto Rican Code of Civil Procedure, 1933 edition, providing:

"Section 398.—(36 L.) (1875 Cal.) (As amended by Act of February 24, 1906, page 82.)—Courts shall take judicial notice of the following facts:

"1. The true significance of all English and Spanish words and phrases, and of all legal expressions.

"2. Whatever is established by law.

"3. Official acts of the legislative, executive, and judicial departments of Porto Rico and of the United States.

"4. The seals of all the courts of Porto Rico, of the States of the Union, and of the United States.

"5. The accession to office and the official signature and seals of office of the principal officers of Government in the legislative, executive, and judicial department of Porto Rico and of the United States.

"6. The existence, title, national flag, and seal of every State or sovereign recognized by the executive power of the United States.

"7. The seals of courts of admiralty and maritime jurisdiction and of notaries public.

"8. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

"In all these cases the court may consult and cite the adequate books or documents.

Under which of the eight subdivisions above quoted do we find authority for judicial notice of what the political parties of Puerto Rico did or announced during the general election campaigns of 1936 and 1940, with regard to the office of city manager of San Juan? We find none. Furthermore, unless the matter noticed was actually set forth in the official resolutions or platform of the party, who could speak with authority for the party and how would a court, or any litigant be able to ascertain the facts?

It may be true that the candidates of certain parties, for membership on the Board of Commissioners of San Juan, announced during the campaign that if elected they would vote for appointment of Dr. de Castro as city manager, but this would not definitely bind the parties to which these candidates belonged to an interpretation of Section 21 as automatically creating a vacancy in that office at any particular time. Furthermore, if the court was warranted in taking judicial notice of that fact, then it should also have taken judicial notice of, or given petitioner an opportunity to prove, the equally important fact that Mr. Benitez Castaño, then city manager of San Juan, resigned in September 1936 (Appendix B, *infra* p. 47), during the same campaign, thus assuring a vacancy in the office early in the

following year, and thus obviating any inference such as that drawn by the court.

As to the further suggestion of the Circuit Court of Appeals in this connection, that the petitioner might have protected himself fully against the inferences drawn by the Puerto Rican Supreme Court from the isolated facts judicially noted, by challenging any such fact improperly noticed, and by citing other facts so noticeable, the unsoundness of that view is at once apparent. It would deprive the petitioner of his right to a full hearing. The pertinent facts offsetting those inferences may have been largely such as are not subject to judicial notice under Puerto Rican law. We say "may have been" not for lack of information as to some at least of those facts, but because the record does not disclose them, petitioner having had no opportunity to prove them. The petitioner alleged the existence of proof of such facts in his motion for reconsideration in the Puerto Rican Supreme Court (R. 60).

Much of what is said immediately above applies with equal force to the further fact judicially noticed by the Puerto Rican Supreme Court, that petitioner became a candidate in the general election of 1940 for membership in the Puerto Rican House of Representatives. The inference drawn by the Court from that fact, to the effect that petitioner himself must have realized that his term as city manager would expire in 1941, is a complete *non sequitur*. At that time his status as city manager had been in suspense and involved in litigation for more than a year. As the fact has transpired, he would have been right in estimating that it would continue so for several years longer in spite of anything he could do. It would obviously have been just as reasonable to infer that he intended, if elected to the Legislature, to abandon his claim to the city managership, regardless of his conviction of the justice of that claim. Other possible explanations of that candidacy, entirely consistent with such a conviction, may easily be postulated. For example, he may have supposed that he could

legally serve as a legislator while his status of city manager continued in suspense during the litigation in which it was then, and might continue for years to be, involved.

Nor does the fact that petitioner accepted his appointment and entered upon the duties of the office on January 4, 1937, over two months before the resignation of his predecessor took effect, warrant a conclusion that he must have then placed on Section 21 a construction different from that which he now maintains. The facts necessary to establish or refute such a conclusion are not in the record, because the length of the term of office was not in dispute in the trial court. Perhaps the petitioner was not at that time fully informed of the details of the resignation of his predecessor, and may have assumed that it had already taken effect. Or, not being a lawyer himself, he may up to that time have given no consideration to the question whether a legal vacancy existed. It will be noted, however, that within a few days after his assumption of the duties of the office, he applied on January 9, 1937, to the Attorney General of Puerto Rico, for an "opinion with respect to the term of the officers and employees of the Capital which were appointed on September 11, 1931". (Appendix D, *infra*, p. 52).

The Puerto Rican Supreme Court also took judicial notice of the fact that Mr. Fernando Geizel, who had been appointed to succeed petitioner upon the latter's removal in 1939, was the "candidate" of certain political parties for the same office in the general election of 1940, that those parties won that election, and that Mr. Geizel was appointed (R. 44). However, petitioner alleged in his "Opposition" to the Board's motion for stay of execution, filed in the Puerto Rican Supreme Court November 4, 1941, that Mr. Geizel merely continued in office as city manager, without reappointment, until his resignation long after January, 1941. In any event, the so-called "candidacy" of Mr. Geizel in 1940 does not support the inference drawn by the Court, any more than does that of Dr. de Castro in 1936, for it

must by that time have been generally known throughout the City that the whole matter was involved in litigation. All that the 1940 candidates for the Board of Commissioners could have meant by announcing Mr. Geizel as their choice for city manager was that they would vote to retain him in that office during their term as long as the courts would permit.

Likewise, with relation to Mr. Benitez Castaño, petitioner's predecessor in the office in question, it was alleged by petitioner in the "Opposition" last above mentioned, that said predecessor remained in office over five years without reappointment (R. 19). If petitioner had been permitted to prove this it would have still further tended to refute the contention of the Board that there was an established administrative construction of the statute to mean a four-year term.

The fact is, as so forth in the foregoing statement of the case (p. 4), the Board itself argued in the earlier stages of this litigation that the term of office of the city manager was for life, and never advanced its present contention to the contrary until it did so, apparently as an afterthought, by its motion for stay of execution filed in the Insular Supreme Court on October 27, 1931, nearly ten months after the expiration of the theoretical four-year term to which they now claim the petitioner was limited.

That the Legislature of Puerto Rico itself not only did not construe Act No. 99 as providing a four-year term for the city manager, but actually declined to insert such a provision in the law, is indicated by the fact that, as originally introduced, Section 21 of Senate Bill No. 1, Regular Session of 1931 of that body, subsequently enacted with amendments as Act No. 99, actually provided expressly for such a term, and was amended before enactment by striking out that provision and substituting the present text (Appendix E, *infra*, pp. 61-62). That the Legislature, as late as 1936 and 1937, was still of the same mind, is shown by the facts that bills were introduced in each of its regular sessions of those years, to provide expressly for elec-

tion of the city manager of San Juan at the quadrennial general elections, and that each of those bills failed of enactment (R. 34-36).

And the Attorney General of Puerto Rico, highest administrative law officer of the Insular Government, in two opinions rendered respectively December 8, 1936, to the Board, and January 30, 1937, to the petitioner, held the term of the city manager to be for life, subject to possible removal for misconduct. See Appendix C, *infra* p. 50 and Appendix D, *infra*, p. 52.

It follows, we believe that administrative interpretation of the law in question, as well as every other available extrinsic indication, was in fact directly contrary to the present contention of the Board and the findings of the Puerto Rican Supreme Court.

POINT II D.

The judgment of January 14, 1942, although phrased as a stay of execution, amounts in substance and practical effect to an amendment of the prior judgment in a vital judicial particular, thus exceeding the jurisdiction of the court.

This "stay of execution" is not the temporary or conditional one to which the great mass of judicial precedent on the general subject of stays of execution relates. According to its literal terms this stay is a permanent and unconditional one. The motion upon which it was based prayed that the court:

> "Issue an order in these proceedings, staying the execution of the judgment rendered in the case at bar on June 28, 1940, insofar as said judgment orders the reinstatement of petitioner Carlos M. DeCastro in the office of City Manager of the Capital, as the tenure of said office, for which petitioner was elected in the year 1936,[11] expired in January, 1941" (R. 18).

---

[11] The phrase "elected in the year 1936" is, of course, erroneous as the fact in this particular is that the petitioner was not elected or even appointed in 1936, but was appointed by the Board on January 4, 1937 (F. R. 1, 30).

The judgment reads:

> **"For the reasons set forth in the foregoing opinion, the motion filed by the Board of Commissioners of San Juan on October 27, 1941, is granted and in consequence thereof the execution of the judgment of this Court of June 28, 1940, is stayed insofar as it decrees the reinstatement of petitioner Carlos M. de Castro in the office of City Manager of the Capital because the term for which he was appointed expired in February,[12] 1941" (R. 46).**

So, the very reason for which the so-called stay was prayed and granted, and the absence of any prescribed period or other condition of any kind in the order, show conclusively that it was definitely intended to be, as it is in form and substance, a wholly unconditional stay forever of the execution of the reinstatement part of the prior judgment thus amounting to all intents and purposes as a vacation of the indicated part of the prior judgment.

Furthermore, it is manifest that the court, in dealing with the motion for stay, regarded it as involving an entirely new question of mixed law and fact, namely the question of the term of the office of city manager, which, in event of determination thereof in favor of the theory of the Board, would call for some kind of reformation or modification of that part of the original judgment providing unqualifiedly for reinstatement. Apparently counsel for the Board, originally, and the court, in formulating its judgment, were apprehensive, and we believe rightly so, that a straight-out judgment amending the original judgment by inserting therein a condition that the reinstatement part thereof should not be effective after January (February?), 1941, would exceed the powers of the court

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[12] Note the discrepancy of one month between the theory of the Board and that of the Court as to the date of expiration of the alleged four-year term of office, a discrepancy not satisfactorily reconciled anywhere in the record, illustrating the difficulty of applying the four-year theory.

In any event they hit upon and adopted the expedient of stay of execution, perhaps hoping thus to bring the action taken within the special authorization of control of process, as well as the amendment provision, of subdivision 8, Section 7, Code of Civil Procedure of Puerto Rico, 1933 Edition, which reads:

"Section 7. (128 Cal.) Every Court has power:

* * * * * * * * * *

8. To amend and control its process and orders so as to make them conformable to law and justice.

Corresponding provision, in exactly the same words, appears in Section 128, Code of Civil Procedure of California, Deering.

Following the reference to the Code provision last above quoted as constituting authority for granting the stay of execution, the Puerto Rican Supreme Court opinion proceeds (R. 39): "See by analogy *McAuliffe* v. *Couglan*, 105 Cal. 268; *Rowe* v. *Blake*, 112 Cal. 637, 643." Upon a careful examination of those cases we fail to discern the slightest bearing that either could have upon the case at bar.

Neither in Puerto Rico nor in California has the statutory regulation last above quoted ever before been recognized as affording any authority for amendment of a final judgment entered in a prior term in any judicial particular, or by adding entirely new matter thereto adversely affecting either party. Nor has it in either jurisdiction ever been held to sanction a permanent stay of execution, amounting in effect to a modification of a judgment entered in a prior term.

On the contrary, the judicial precedents of both Puerto Rico and California are uniformly to the effect that the amendatory authority extended by the quoted procedural statute allows, after final entry of judgment, only the correction of clerical errors or misprisions, and does not permit the insertion of new judicial provisions.

It was so held by the Puerto Rican Supreme Court in the relatively early case of *Marvin & Jones Inc.* v. *Torres,* 19 P. R. R. 46 (1913), the authority of which remains unchallenged to this day.

And the California appellate courts have followed the same rule in many cases, of which we cite the following:

(1) Where it was sought to amend a mortgage foreclosure decree two months after its entry, by inserting a new item in the description of property to be sold thereunder. *First National Bank* v. *Dusy,* 110 Cal. 69, 74, 42 P. 476, 478.

(2) With relation to a belated attempt to insert provision for alimony and attorneys' fees in a previously entered divorce decree, *O'Brien* v. *O'Brien,* 124 Cal. 422, 428, 57 P. 225, 227.

(3) Where the trial court, some months after entering judgment of dismissal of an action for specific performance, attempted to insert therein, by *nunc pro tunc* order, a judgment for costs. *In re Potters Estate,* 141 Cal. 424, 75 P. 850, citing *inter alia* Freeman on Judgments, secs. 61, 68, and *Leonis* v. *Leffingwell,* 126 Cal. 372, 58 P. 940.

(4) Where a writ of mandamus had to be issued to compel a trial court to settle a bill of exceptions for review of the legality of a substantial amendment to a judgment entered five months before. *Calkins* v. *Monroe,* 17 Cal. App. 324, 119 P. 680.

(5) In granting a writ of prohibition to a trial court to prevent hearing and determination of motion to modify or revoke an injunction previously granted after notice and hearing. *United Railroad Company* v. *Superior Court,* 170 Cal. 755, 151 P. 129.

(6) Where a writ of prohibition was granted to prevent enforcement by the trial court of a judgment (in a partnership dissolution suit) which had been amended two months after its entry by *nunc pro tunc* order so as to eliminate a

provision in the original judgment for appointment of a receiver. *Schroeder* v. *Superior Court*, 73 Cal. App. 687, 239 P. 65.

(7) In an action in ejectment, where the trial court, after entry of final judgment, attempted to amend the same in certain judicial particulars. *Stanton* v. *Superior Court*, 202 Cal. 478, 261 P. 1001, citing *Dolan* v. *Superior Court*, 47 Cal. App. 235, 240, 190 P. 469.

In California, after entry of final judgment, the power to amend is gone, except as this may be authorized by the Code provision for correction of clerical errors or misprisions, and those for conforming the conclusions and judgment to the findings of fact. Any further order or judgment is a nullity, because the court is without jurisdiction. *Bank of Orland* v. *Dodson*, 127 Cal. 208, 59 P. 584; *White* v. *White*, 130 Cal. 597, 62 P. 1062; *Consolidated Construction Co.* v. *Pacific Electric Railway*, 184 Cal. 244, 193 P. 238; *Gillespie* v. *Andrews*, 78 Cal. App. 599, 248 P. 715.

For the reasons above indicated, we conclude that the Puerto Rican Supreme Court was clearly and manifestly in error in citing subdivision 8 of section 7 of the Puerto Rican Code of Civil Procedure as authority for its action in granting a permanent stay of the execution of the reinstatement part of its original judgment (R. 39), amounting to a substantial amendment of that judgment; and that the Court of Appeals likewise erred in that part of its opinion holding on the same ground in substance that if the Court below was correct in its conclusion that the petitioner's term of office had expired, that Court had jurisdiction to stay the execution of its judgment insofar as it decreed reinstatement (R. 81).

There being no other statutory authority for such action it is necessary to conclude also that the decision was patently erroneous and inescapably wrong. The Puerto Rican Supreme Court should have treated the question of term of office as a pure question of law answerable in favor of

the petitioner on the face of the record (see Point IIA, *supra*, pp. 20-24). Even if that Court had been right in regarding section 21 of Act No. 99 as ambiguous with relation to the term of office, and as thus warranting resort to extrinsic aids for its interpretation, the case should have been remanded to the District Court for determination of that partially factual question (See Point IIB, *supra*, pp. 24-27).

CONCLUSION.

The opinion and judgment of the Supreme Court of Puerto Rico, staying the execution of its prior judgment directing reinstatement of the petitioner as city manager, are plainly, manifestly and patently erroneous, and the United States Circuit Court of Appeals likewise erred in affirming that judgment.

The judgment of the United States Court of Appeals should be reversed with a direction to remand the case to the Insular Supreme Court with instructions to quash the stay of execution.

Respectfully submitted,

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APPENDICES.

A.—Extracts of Puerto Rican Act No. 99, approved May 15, 1931, and copy of section 50 thereof as amended by Act No. 10 of March 24, 1937 (pp. 43-46).

B.—Resolution No. 243 of the Board of Commissioners of San Juan, dated September 16, 1936, accepting resignation of Mr. Jesus Benítez Castaño (pp. 47-49).

C.—Opinion of Attorney General of Puerto Rico, dated December 8, 1936 (pp. 50-51).

D.—Opinion of Attorney General of Puerto Rico, dated January 30, 1937 (pp. 52-60).

E.—Certificate of the Secretary of the Puerto Rican Senate as to legislative history of section 21 of Act No. 99 (pp. 61-62).

F.—Memorandum of decisions of this Court enunciating the rule of deference to judgments of Territorial Courts in matters of local law (pp. 63-78).

APPENDIX A.

EXTRACTS OF ACT NO. 99 OF THE PUERTO RICAN LEGISLATURE,

Approved May 15, 1931

(Laws of Puerto Rico, 1931, pp. 626-656)

AN ACT
TO ESTABLISH A SPECIAL GOVERNMENT FOR THE CAPITAL OF PORTO RICO, AND FOR OTHER PURPOSES.

Be it enacted by the Legislature of Porto Rico:

Section 1.—The Municipality of San Juan, Porto Rico, as constituted by legislation in force, is hereby abolished. In its place is created a body politic and juridic of local government, with the same territorial limits that the Municipality of San Juan now has.

Section 2.—The word "Capital" as used in this Act shall refer to the body politic and juridic created in accordance with the preceding section.

* * * * * * * * * * *

Section 9.—The legislative powers conferred by this Act on the Capital shall be exercised by a governmental body which shall be officially known as "Board of Commissioners of San Juan." This Board of Commissioners shall be composed of five members, who shall be appointed by the Governor of Porto Rico, with the advice and consent of the Insular Senate, for the following terms:

One Commissioner for a term of one year;
One Commissioner for a term of two years;
One Commissioner for a term of three years;
One Commissioner for a term of four years;
One Commissioner for a term of five years.

None of the first five commissioners appointed in accordance with this Act shall assume his office until his appointment has been confirmed by the Insular Senate.

Section 10.—There are also hereby created the offices of City Manager, Treasurer, Director of Public Works, Director of Health and Charities, School Director, Auditor and Secretary of the Capital.

* * * * * * * * * * *

Section 18.—Subject to other provisions of this Act, the Board of Commissioners shall have, among its other legislative and administrative powers, the following special powers:

(1) To approve the annual budget of receipts and expenditures;

(2) To sell, exchange, encumber, or lease real and personal property belonging to the Capital; *Provided*, That ordinances selling, exchanging, encumbering, or renting waterworks, electric plants, or any other establishment or plant for the exploitation of a public service for the Capital, shall be ratified and approved by the Legislature;

(3) To authorize loans, subject to the approval of the Executive Council of Porto Rico;

(4) To levy reasonable taxes and excises within the jurisdictional limits of the Capital; *Provided*, That for the purpose of applying the industrial and commercial license tax act approved by the Legislature of Porto Rico on March 28, 1914, the Board of Commissioners is hereby authorized to include, by means of an ordinance or resolution, any industrial or commercial establishment or agency not enumerated in said act;

(5) To create such positions as may be strictly necessary for the government of the Capital, and to provide the corresponding salaries in the budget; *Provided*, That the Board of Commissioners may not create any department or office in addition to those herein prescribed; *Provided, further*, that no salary shall be paid to any employee whose position is not previously created by ordinance or resolution of the Board of Commissioners, specifying the powers and duties of such employee, and stating the need of the position for the public service;

(6) To create any independent board or commission to administer the waterworks or any other public service of the capital.

* * * * * * * * * *

Section 21.—The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct.

Section 22.—The City Manager may be removed by the Board of Commissioners, for just cause, upon hearing and an opportunity to defend himself either in person or

through attorneys. The following shall be causes for the removal of the City Manager: Any act of his constituting a felony; any act of his constituting a misdemeanor and implying moral turpitude; or carelessness, inexcusable negligence in the performance of his duties, or immoral or incorrect conduct in the exercise thereof.

Section 23.—Whenever the Board of Commissioners files charges against the City Manager, the latter may be suspended and the payment of his salary stopped.

* * * * * * * * * * *

Section 25.—When the office of City Manager is vacant, it shall be incumbent upon the Board of Commissioners to designate the person who shall fill said vacancy; *Provided*, That until the said vacancy is filled, the said office shall be discharged by a member of the Administrative Board, in accordance with the preceding section.

Section 26.—The City Manager shall appoint the following officers:

(1) Treasurer of the Capital;
(2) Director of Public Works;
(3) Director of Health and Charities;
(4) School Directors;
(5) Secretary of the Capital.

Section 27.—The Treasurer, the Director of Public Works, the Director of Health and Charities, the School Director, and the Secretary of the Capital may be removed by the City Manager, for just cause, upon hearing and an opportunity to defend themselves either in person or through attorneys. The following shall be causes for the removal of said officers: Any act of theirs constituting a felony; any act of theirs constituting a misdemeanor and implying moral turpitude; carelessness, or inexcusable ignorance in the performance of their duties, or immoral or incorrect conduct in the exercise thereof.

* * * * * * * * * * *

Section 36.—The Auditor of the Capital shall be appointed by the Board of Commissioners. This official may be removed by the Board of Commissioners for just cause, after a hearing and an opportunity to defend himself either personally or by attorneys. Causes for removal of this official shall be any act performed by him which constitutes a felony; any act performed by him which constitutes a

misdemeanor and implies moral turpitude; carelessness or inexcusable negligence, or immoral and incorrect conduct, in the discharge of his office.

* * * * * * * * * *

Section 39.—All appointments of employees shall be made by the respective officers, according to the department of the Capital in which they render services. Said employees shall be appointed for the term for which each officer is appointed. The employees of the Capital may be removed for just cause by the officer appointing them, after a hearing and an opportunity to defend themselves. Any employee may be suspended from office and salary upon the preferment of charges against him by the corresponding official.

* * * * * * * * * *

Section 50.—The Board of Commissioners created by this Act shall be elected by popular vote at the general elections to be held in 1936, and every four years thereafter. The Commissioners appointed by the Governor of Porto Rico in accordance with section 9 of this Act shall hold office until the first Monday in January of 1937.

* * * * * * * * * *

Section 50. (as amended by Act No. 10, March 24, 1937, Laws of P. R., 1937, p. 131). The Board of Commissioners created by this Act shall be composed of nine members. Five of these nine members shall be elected by the popular vote of the qualified voters of both precincts of San Juan at the general elections to be held in 1940 and each succeeding four years. The other four members shall be appointed by the Governor of Puerto Rico with the advice and consent of the Insular Senate. The nine members of the Board of Commissioners shall take office on the second Monday in February following each general election; *Provided*, That the five members of the Board of Commissioners elected at the general election of 1936 shall continue in office until the end of the terms for which they were elected, and said Board of Commissioners shall be increased in the manner indicated as soon as this Act takes effect. * * *

APPENDIX B.

RESOLUTION NO. 243, BOARD OF COMMISSIONERS OF SAN JUAN, SEPTEMBER 16, 1936.

Granting A Leave of Absence to the City Manager Honorable Jesus Benitez Castaño, Accepting the Resignation of His Office; and for other Purposes.

Whereas, the Honorable Jesus Benitez Castaño, City Manager of San Juan, has addressed a letter to this Board of Commissioners dated September 11, 1936, which reads as follows:

> I have the honor of addressing you to inform that I have sent a letter to the Treasurer of the Capital, Mr. Bolivar Pagán requesting him, in accordance with the law which governs us, that he assume the duties of Manager of the Capital beginning tomorrow, and making known to him my decision of requesting from you a leave of absence, at the termination of which you can consider my resignation as City Manager tendered, notwithstanding that I will continue the work of terminating the report of the activities of this government for the year 1935-36, in which I will make a brief review of the work of this administration from September 11, 1931 to date.
>
> I therefore request of you to grant me a leave of absence of 150 working days, with pay, commencing tomorrow, at the end of which term my resignation as City Manager, which I now tender irrevocably, shall take effect.
>
> It seems unnecessary to state to you that if during the term of my leave my appearance is necessary for any matter of the government I will promptly come before you and render any service that may be needed to the Government of the Capital.
>
> Yours truly,
>
> (Sgd.) JESUS BENITEZ CASTAÑO,
> *City Manager of the Capital.*

Whereas, on the same date, September 11, 1936, the City Manager of the Capital, Honorable Jesus Benitez Castaño, sent to this Board of Commissioners the following letter:

> As an addition to my previous letter of this date I wish to state that the principal reason that prompted me to request of Mr. Bolivar Pagán, Treasurer of the Capital that he take charge provisionally of the duties and obligations of my office as City Manager of the Capital, and request of you a leave of absence, is, that my physician, Dr. Ramon M. Suarez has recommended a prolonged rest without prejudice of my dedicating a few moments daily to the termination of the annual report corresponding to the year 1935-36 which, as I informed Mr. Pagán and you has great importance for me.
>
> Nevertheless, as upon accepting the office of City Manager, I did so completely determined to fulfill this office until the Tuesday following the first Monday of 1937, (in this case 4th of January 1937), above all other consideration, including my health, I am ready at any time to assume the duties of my office, if in my judgment before the concession of the leave requested this should be necessary, or in the event that you should deem it necessary to the interest of this administration after granting the same.
>
> Hoping that you can act as soon as possible on my request for the leave requested in the aforementioned letter of the 11th, I am,
>
> Yours truly,
>
> (Sgd.) JESUS BENITEZ CASTAÑO,
> *City Manager of the Capital.*

Therefore, Be It Resolved by the Board of Commissioners of San Juan:

Section 1.—To grant, as it is hereby granted, to Mr. Jesus Benitez Castaño, the leave of absence requested by him as City Manager, effective from the 12th of September 1936 at the first hour, which will be extended for one hundred and fifty (150) working days, with pay.

Section 2.—To accept, as it is hereby accepted, the resignation presented by Mr. Jesus Benitez Castaño of his office of City Manager of San Juan, effective immediately upon termination of the leave referred to in the previous section.

Section 3.—This Board of Commissioners makes complete acknowledgment of the competent and effective work done by Mr. Jesus Benitez Castaño as Chief Executive of this Administration and wishes at the same time to give a vote of thanks to Mr. Benitez Castaño for the services rendered by him to this Government of the Capital in an honest, conscientious and constructive manner.

Section 4.—In conformity with the provisions of the law that govern this Government of the Capital, by these presents, the Honorable Bolivar Pagán is designated to fulfill the functions of City Manager of San Juan.

Section 5.—This resolution, being of an urgent nature, will take effect immediately after approval.

I, LINO PADRON RIVERA, Secretary of the Capital,

Do Hereby Certify:—That the preceding is a true and correct copy of the original text of the ordinance approved by the Board of Commissioners of San Juan in the extraordinary session held on September 16, 1936, with the affirmative votes of Manuel San Juan, Angel M. Pesquera, Jaime Sifre Jr., Eudardo R. Gonzáles, and the President Mr. Rafael Landrón y Landrón, as appears from the records in my custody.

As the request of attorney Gabriel de la Haba, I sign these presents and affix thereto the Seal of the Capital, at San Juan, Puerto Rico, this 3rd day of August 1943.

(Sgd.) L. PADRÓN RIVERA,
LINO PADRON RIVERA,
Secretary of the Capital.

(Seal of the Capital.)

APPENDIX C.

OPINION OF THE ATTORNEY GENERAL OF PUERTO RICO, DECEMBER 8, 1936.

December 8, 1936.

Mr. Rafael Landrón Landrón, President, Board of Commissioners, Government of the Capital, San Juan, Puerto Rico.

Sir:

I acknowledged receipt of your letter of December 2, of this year, in which you request my opinion as to whether the Board of Commissioners of the Capital, elected in the past elections held in this Island can, by virtue of the provisions of article 50 of the law creating the Government of the Capital, appoint a new city manager to take office as soon as appointed, if the person were other than the one now holding office.

You state that the City Manager of the Capital, Mr. Jesús Benitez Castaño, is now enjoying, as appears from Resolution No. 243 approved by the Board of Commissioners of San Juan, which you enclose, a vacation with pay of 150 working days, and by said resolution the resignation of said official is accepted to take effect upon termination of the leave, and that at present Mr. Bolivar Pagán is acting as Manager of the Capital.

I am sorry to inform you with respect to the above inquiry, that this office cannot render the opinion requested by you because of the fact that the members elected to the Board of Commissioners will not be able to take possessions of their offices as such until the first Monday in January, 1937, and it is to this new Board that would correspond the formulation of your consultation, in the event that it might deem the same convenient: therefore considering the inquiry made by you of a hypothetical nature for the reasons stated.

Regarding the subject of inquiry you ask in addition if the Board of Commissioners could appoint a new Manager to take office prior to the expiration of the leave granted to Mr. Benitez Castaño.

I ignore whether in mentioning the Board of Commissioners you refer to the present Board or to that elected in the past elections. If you refer to the latter your inquiry would be hypothetical as above expressed; if on the contrary you refer to the present Board of Commissioners then I must answer your consultation in the negative, inasmuch as in accordance with Article 24 of the Law of the Capital, in the event of a leave by the City Manager of the Capital, he is replaced provisionally by one of the officers in their order of priority as they appear enumerated in Article 26 of the same law, and as a result of this, having granted a leave to the City Manager Mr. Jesús Benitez Castaño and this official being in the enjoyment of the same, the Treasurer of the Capital Mr. Bolivar Pagán is acting as temporary manager and until such time as the office becomes vacant the Board has no authority to appoint a new City Manager before the expiration of the leave granted to Mr. Benitez Castaño. See Section 25 of the law cited.

Yours truly,

B. FERNÁNDEZ GARCÍA,
Attorney General.

EA/RCA/ach/eo.

Rafael Cabello, File Clerk of the Department of Justice of Puerto Rico, do hereby certify:—

That the foregoing is an exact and true copy of the opinion rendered by the Attorney General of Puerto Rico to Mr. Rafael Landrón y Landrón, President of the Board of Commissioners of the Government of the Capital, as of December 8, 1936 which is on record in the files of this Department under my custody; and at the request of attorney Gabriel de la Haba I issue this copy which I sign and affix thereto the seal of the Department, on this 13th of November 1942, cancelling thereon internal revenue stamps amounting to one dollar twenty five cents ($1.25).

(Signed) RAFAEL CABELLO,
File Clerk Department of Justice.

Internal Revenue Stamps cancelled in the amount of $1.25.

(SEAL.)

APPENDIX D.

OPINION OF THE ATTORNEY GENERAL OF PUERTO RICO

Copy. January 30th 1937

Dr. Carlos M. de Castro City Manager of the Capital San Juan, P. R.

SIR:

I am pleased to acknowledge receipt of your communication of the 9th instant requesting my opinion with respect to (1) the term of the officers and employees of the Capital which were appointed on September 11th 1931; and (2) if the new administration is or is not a continuation of the former.

From your letter it appears that the commissioners elected on the 3rd of November 1936 took possession of their offices on January 4th of the present year.

Your consultation involves the interpretation of various sections of the law establishing a special government for the Capital of Puerto Rico (Law No. 99 of the 15th of May 1931, subsequently amended, to wit;

* * * * * * * * * *

(The opinion here quotes sections 9, 10, 18, 21, 25, 26, 27, 36 and 50 of the act cited. See Appendix A, *supra*, pp. 43-46).

* * * * * * * * * *

In accordance with the transcribed provisions, and speaking in general terms, the Government of the Capital is composed of a Board of Commissioners, which is the legislative organ, of various administrative officers who constitute the executive and administrative branch, and of those employees that may be necessary for the functioning of said government.

The Board of Commissioners is elected by popular vote every four years, except the commissioners who formed the first board, who were appointed by the Governor of Puerto Rico, with the advice and consent of the Senate and for a term which expired the first Monday of January 1937,

having taken possession on this date those commissioners elected in the elections held on the 3rd November 1936.

The appointment of the City Manager is incumbent upon the Board of Commissioners whenever said office becomes vacant, as well as the auditor of the Capital, and also the creation of such positions as may be strictly necessary, and the incorporation in the budget of the corresponding salaries. The Administrator of the Capital in turn is authorized to appoint the administrative officers, with the exception of the auditor, and to these officers correspond the appointment of the employees pertaining to their departments whose positions may have been created previously by ordinance or resolution of the Board of Commissioners.

With the exception of the term of four years which is established as the term of duration of the office of Commissioner, the law does not establish the term of duration with respect to other officers and employees of the Government of the Capital. With regard to the City Manager it is provided in Article 21 *supra* that he will fulfill his office during good behaviour, and with respect to the other administrative officers nothing is provided in the law, although in article 39 it is provided that the employees appointed by the Administratve officers will discharge their duties for the same term of appointment of each of such officers.

It is the general doctrine that discharge of the duties of an office or public employment is for a definite term, or while the officer and employee observe good conduct (during good behaviour), or at the will or discretion (at pleasure) of the nominating authority, unless its power to separate or discharge is limited by the law.

> "Officers and persons in public position hold, first, for a definite term; second, during good behaviour; or, third, at the will or discretion of some officer or department * * * A definite term is where the law so prescribes, which may be by statute, or the organic law of the state. 2 McQuillin Municipal Corporations, 2d Ed., p. 163."

"All offices, the tenure of which is not fixed by the Constitution or limited by law, must be held either during good behavior, or (which is the same thing in contemplation of law), during the life of the incumbent." In the matter of *Duncan N. Hennen*, 38 U. S. 202-227."

"A provision in the charter that the appointees of a certain department shall hold office during good behavior was construed to mean that such appointees shall hold office during good behavior not to exceed the limit fixed by the Constitution." *Stuart* v. *Ellsworth*, 75 Atl. 59; McQuillin Municipal Corporations, second edition, p. 170, sec. 508 (488).

"Ordinarily in the absence of any constitutional restriction there is no inherent objection under the American form of government to the creation of public offices with the tenure of good behavior." 22 Ruling Case Law, p. 551.

"If no definite term exists and the law does not otherwise provide, the tenure is at the will of the authority which confers the office, and unless restrained by law, the power which appoints may remove." 2 McQuillin Municipal Corporations, 2nd. Ed., p. 171.

"If no definite term is prescribed, and in the absence of legal restrictions, including civil service regulations, the incumbent holds subject to discharge at any time." 2 McQuillin Municipal Corporations, 2d. Ed., p. 172.

"When the term of tenure of a public officer is not fixed by law, the general rule is that the power of removal is incident to the power to appoint. The tenure not having been declared by law, the office is held during the pleasure of the authority making the appointment. Hence in the absence of all constitutional or statutory provision as to the removal of public officers the power of removal is considered as incident to the power of appointment." 22 R. C. L. p. 562.

"The power of appointment generally carries with it, as an incident, the power to remove; but the power of removal may be impliedly or expressly restricted by constitutional provisions or statute, and the general rule does not apply when a definite term is attached to an office by law, or where it is provided that the officer shall hold during good behavior." 46 C. J. 985.

"Where the constitution provides that appointive officers may be removed at the pleasure of the power

by which they shall have been appointed, they are removable at the pleasure of the appointing power, notwithstanding the legislature has fixed a definite term of service * * *." 46 C. J. 985.

"Where the power of removal is limited to specific causes, the removing authority may not remove for any cause not so specified. It is sometimes provided by the constitution or statute that removal shall be had for 'cause' or 'only for cause', and it is generally held that, in the absence of provisions to the contrary, officers appointed for a definite term, or to hold during good behavior, are removable only for 'cause', even though it is not so provided by statute. However, unless restricted by positive provisions of the law, the power of appointment generally carries with it, as an incedent, the power to remove, at the pleasure of the appointing power, officers not holding under a term fixed by law * * *." 46 C. J. 985-986.

The law which we are now interpreting does not contain any provision authorizing the discharge of officers at the will of the nominating authority. On the contrary it limits its faculties of separating a public officer or employee from his office or employment, establishing on the contrary that the discharge must be for just cause, hearing, and opportunity for defense, personally or through an attorney at law. The City Manager may be discharged by the Board of Commissioners for the following reasons:

For any act committed by him which constitutes a grave offense (felony); any act committed by him that constitutes a minor offense (misdemeanor) and implies moral turpitude, abandonment, inexcusable negligence in the discharge of his duties or immoral or incorrect conduct in the discharge thereof. The auditor of the Capital, like the City Manager, may be discharged by the Board of Commissioners for the same causes as the other administrative officers. Employees may be discharged by the appointing officer, for just cause, hearing, and opportunity of defense.

It results from what has been heretofore stated that the Commissioners discharge the duties of their office for

a definite term of four years and that the city manager discharges his duties during good behavior, that is to say, with the character of a life tenure. It also appears that the power of discharge is limited and regulated by law and that, therefore, no other public officer or employee of the Capital discharges the duties of his office at the will of the person appointing him.

With these circumstances in view, do the appointments of the officers and employees made on September 11th 1931 upon the inauguration of the new system of government for the Capital of Puerto Rico participate of the nature of a life tenure? We are inclined to decide that it was the intention of the legislator to give such a character to said offices and position, more so, when the law does not fix a definite term of duration and limits the discharge to certain causes and to certain procedure.

Apart from these another reason exists which sustains our conclusion, and this is, that the administrative officers of the capital are not agents of the City Manager or of the Board but of the political and juridic corporation known ts the Capital of Puerto Rico.

> "Though a public employment be without term and at will it does not necessarily follow that it is conterminous with the expiration of the term of office of the appointment power. To do so the employment must create the relation of principal and agent between the appointing power and the appointee. This situation is best illustrated in the case of deputies to executive officers where the courts have held that a deputy is a mere adjunct of the appointing power and hence his employment or term of office ceases with the expiration of the term of office of the appointing power. A deputy is defined as one 'who by appointment exercises an office in another's right, having no interest therein but doing all things in his principal's name and for whose misconduct the principal is answerable.' 9 A. & E. Ency. L. 369. 'A Deputy * * * is in law deemed an agent.' Story on Agency, Sec. 149, note, cited in *Haring* v. *Lee*, 22 W. Va. 661, 667. Hence the term of office of the deputy, upon principles of agency,

is conterminous with the expiration of the office of his principal. (See *Greenwood* v. *The State*, 17 Ark. 332, 338, *Wilson* v. *Russell*, 31 N. W. (Dak.) 645, 650; *Boardman* v. *Halliday*, 10 Paige (N. Y.) 223, 230; *Hord* v. *State*, 70 N. E. (Ind.) 916, 922 and cases cited." *Ahia* v. *Cain*, 27 Haw. 770.)

"This statute does not in terms fix any specified period during which an appointment to the office of superintendent of the poorhouse and farm continues. But the same is also true of the offices of deputy clerk and deputy sheriff, the appointments to which continue during the pleasure of the clerk or the sheriff making the appointment. Yet it has never been doubted, so far as we are aware, that the term of a deputy sheriff or deputy clerk ends by operation of law with the term of the sheriff or clerk by whom he was appointed. The clerk and sheriff being charged with the general responsibility for the conduct of their respective offices, it is so plain that a deputy appointed by a predecessor should not hold over it was deemed unnecessary to say that the term of the deputy should end with the term of the clerk or sheriff who appointed him. So it is with the office of superintendent of the poorhouse and farm. The county board of commissioners are by law made responsible for the general supervision of the poorhouse and farm of the county, and it was never intended that the subordinate officer, appointed by them for the superintendence of the institution should have a longer term than those by whom he was appointed. The statutory scheme of general supervision by the board and subordinate supervision by the superintendent repels the idea of one board having the power to impose a superintendent on a succeeding board." *Sanders* v. *Belue*, 58 S. E. 764.

This doctrine dispels any doubt that may exist on the question that if by reason of the resignation of the former City Manager Mr. Jesús Benitez Castaño, all the Administrative officers appointed by him ceased in the discharge of their duties.

Although true that the City Manager, as Chief Executive of the Government of the Capital, has the direction and

general superintendence of all the officers of the Capital, as well as the inspection and superintendency of all public services, the administrative officers have powers and duties delegated to them by law which they exercise, not as agents of the City Manager, but as agents of the public corporation known as The Capital of Puerto Rico. The City Manager is not responsible for the negligence of said public officers in the discharge of their duties, but the corporation is, and therefore, said officers are not agents of the City Manager but his auxiliaries (adjuntos) in the current and ordinary sense of the word.

Finally we must bear in mind that the system of government of the Capital was adapted from the system in use in various States of the United States, of which the city of Dayton, Ohio, is a typical example.

This system of government (Council Manager system) requires men of experience in municipal functions that can manage efficiently all the services for the common benefit. In order to obtain this class of officers the establishment of the administrative profession is necessary, and for this purpose it is in turn required that municipal offices should not have a definite term of duration, that the officers be appointed instead of being elected, and that they favor a non partisan administration.

By virtue of the foregoing it is my opinion that the administrative officers of the Capital appointed September 11th 1931, upon the inauguration of the new system of government for the Capital, and to whom the law does not fix a definite term of duration, were appointed during good behavior, are not subject to separation at the will or discretion of the City Manager but only for the causes specified in the law through charges, hearing, and opportunity of defense, personally, or by means of an attorney at law.

Applying the principles outlined in the course of this opinion to the employees of the Capital of Puerto Rico, referred to in Article 39 of the law, we understand that these employees cease in their employment upon the ceasing of

the officer who appointed them, for the reason that generally, said employees are in fact the agents through which the administrative officer exercises the powers prerogatives and duties assigned to him by law, and these officers are responsible for the negligence of their employees in the discharge of their duties. Their positions are the creation of the Board of Commissioners which in turn fixes the powers and duties of their employment, the salary of the employee, and the necessity of the position for the public service.

> "The specific period may be inferred from the nature of the office and the duties of the officer. For example, when an inferior office is created, the tenure may be implied to be the same as that of the superior office to which the inferior is an adjunct. Such an implication is especially strong when the inferior officer is charged with minor matters; the general supervision and responsibility devolving on the superior officer." *Sanders* v. *Belue*, 58 S. E. 764.

In deciding the preceding question in this manner I have been guided by the majority rule which is condensed in the following paragraph taken from 70 A.L.R. 799, to wit:

> "In most jurisdictions where a board appoints an officer, or contracts for services, and the duties of the officer or the services to be rendered are duties delegated to the supervision of the board, such appointment or contract for a period beyond the term of the board is not valid. And the same rule applies to confidential relations, such as counsel for the board."

With regard to your other inquiry as to whether the nine commissioners and administrative officers of the Capital who took posesson of their offices on the 4th of January of this year are or are not a new administration, distinct from the former, I must inform you that in my opinion the Board of Commissioners is a continuing body that does not change even though the commissioners change. The same is applicable to the administrative board.

"There was no act constituting fraud in the execution of the contract alleged (one for teaching service) making the only question one of power of the board to make such a contract. The district school board is a corporation representing the district. It is a continuous body. While the personnel of its membership changes, the corporation continues unchanged. It has power to contract. Its contracts are the contracts of the board, and not of its individual members. An essential characteristics of a valid contract is that it is mutually binding upon both the parties to it." *Taylor* v. *School District*, 47 Pac. 758.

Respectfully,

B. FERNANDEZ GARCIA,
Attorney General.

I, Rafael Cabello, File clerk of the Department of Justice of Puerto Rico, Certify:

That the preceding is a true and exact copy of the opinion rendered by the Attorney General of Puerto Rico to Dr. Carlos M. de Castro, City Manager, on January 30th 1937, which appears on the files of this Department under my custody; And at the request of Gabriel de la Haba, Esq. I issue this copy which I sign and seal with the seal of the Department, this 13th day of November, 1942, cancelling Internal Revenue stamps for five dollars and seventy-five cents ($5.75).

(Sgd.) RAFAEL CABELLO,
File Clerk, Department of Justice.

APPENDIX E.

CERTIFICATE OF THE SECRETARY OF THE SENATE OF PUERTO RICO.

Showing text of Section 21 of Senate Bill No. 1 (subsequently enacted as Act No. 99), as originally introduced at the Regular Legislative Session of 1931, and as finally enacted.

I, Y. SOLA MORALES, Secretary of the Senate of Puerto Rico, do hereby

CERTIFY

That in accordance with the minutes and records of the Senate of Puerto Rico, of which I am in charge, the text of Article 21 of Senate Bill No. 1, of the Regular Session of 1931 of the TWELFTH LEGISLATIVE ASSEMBLY, entitled

"To establish a special government for the Capital of Puerto Rico, and for other purposes",

as it appears from the original of said bill, is as follows:

"Article 21.—The mayor will be the chief executive of the capital, and shall be elected by popular vote in the general elections that are to be held in Puerto Rico every four years in accordance with the provisions of the Organic Act and in accordance with the Electoral Law in force during each election with respect to other municipalities of the Island. The mayor will discharge the duties of his office during a term of four years and until such time as his successor, duly elected or appointed, takes possession of the office."

I FURTHER CERTIFY

FIRST: That the text of said Article 21, as it was finally approved by the Senate and the House of Representatives of Puerto Rico, is as follows:

"CITY MANAGER

"Section 21.—The City Manager shall be the chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct."

SECOND: That in said minutes and records of the Senate of Puerto Rico no explanation appears for the reasons that motivated the amendments introduced to said article 21 of Senate Bill No. 1 hereinbefore mentioned.

AND AT THE REQUEST OF A PARTY IN INTEREST I issue these presents, in my office, on the twenty-third day of March nineteen hundred forty-four.

(Sgd) Y. SOLA MORALES,
Secretary.

Seal of the Senate of Puerto Rico affixed and a $1.00 Internal Revenue stamp cancelled.

APPENDIX F.

Memorandum of Decisions of United States Supreme Court enunciating Rule of the Respect to be accorded to Decisions of Territorial Courts upon Questions of local Territorial Law.

Sweeney v. Lomme, 22 Wall. (89 U. S.) 208, 213.

MILLER J.; *Montana Territory;* December 21, 1874.

Suit on a replevin bond, originally given by plaintiffs in error, *Sweeney, et al.*, to a sheriff, for the benefit of Lomme, defendant in error, then an attaching creditor. This Court said (pp. 212-213):

> "The first error assigned and mainly relied on is, that the bond having been given to Roberts, the Sheriff, this action cannot be maintained by Lomme, the party for whose benefit it was really given.
>
> "The question has been decided differently by different State Courts under precisely the same Code of practice.
>
> "Without expressing any opinion of our own on the question, we hold that as it is one which arises under their own Code of practice, we should, in this conflict of authority, adopt the ruling of the Supreme Court of Montana in the consideration of it."

Northern Pacific R. Co. v. Hambly, 154 U. S. 349, 361.

BROWN, J.; *Dakota Territory;* May 26, 1894.

Fellow servant case. Question whether members of track crew, and of train crew, are fellow servants. Decided both ways in different States.—Decided that they are, by the Supreme Court of Dakota. This Court, rather inclined also to that opinion, if it were to be treated as an independent question, yet says, with reference to the Dakota Court's decision:

> "While this construction, given by the Supreme Court of a Territory, is not obligatory upon this Court, it is certainly entitled to respectful consideration, and in a doubtful case might well be accepted as turning the scale in favor of the doctrine there announced."

Fox v. Haarstick, 156 U. S. 674, 678-679.

SHIRAS, J.; *Utah Territory;* March 4, 1895.

Judgment of Utah Supreme Court, affirming District Court judgment for damages, for refusal to assign shares of stock in a transportation company.

> "The record discloses the affirmative findings of the trial Court which, of themselves fully warrant the conclusion of law based upon them, that the plaintiff was entitled to recover. * * *
>
> "This was the conclusion reached by the Supreme Court of the Territory, * * *
>
> "It is true that this ruling of the Supreme Court of the Territory does not, even in a question of practice arising under the local law, preclude this Court from reviewing it, as would a decision of a State court in similar circumstances; *but unless a manifest error be disclosed, we should not feel disposed to disturb a decision of the Supreme Court of a Territory construing a local statute. So far from discovering manifest error, we concur with the Supreme Court of the Territory in their disposition of the question.*" (*Italics supplied.*)

Armijo v Armijo, 181 U. S. 558, 561.

PECKHAM J.; *New Mexico Territory,* May 15, 1901.

An accounting suit; the New Mexico Supreme Court had certified that it was unable to find the facts, "the appeal not having been perfected in such a manner as to bring them before that Court", which had "decided that in order to bring before it the facts", "it was necessary that a motion for a new trial should be made in the court below, and if such motion were not made the facts in the case were not brought before the appellate court".

MR. JUSTICE PECKHAM says (at p. 561):

> "This matter of practice in the courts of the Territory is based upon local statutes and procedure, and we are not disposed to review the decision of the Supreme Court in such case. *Sweeney* v. *Lomme,* 22 Wall. 208. Our jurisdiction to review judgments of Terri-

torial courts is found in the statute approved April 7, 1874, chapter 80, entitled 'An Act concerning the practice in Territorial courts, and appeals therefrom', 18 Stat. 27. * * *

"This statute constitutes our only right of review on appeals from the Territorial courts. *Apache County* v. *Barth*, 177 U. S. 538, 541; *Grayson* v. *Lynch*, 163 U. S. 468, 473."

"In the absence of any findings by the Supreme Court of the Territory, and also being without anything in the nature of a bill of exceptions, we have nothing on which to base a reversal of the judgment in this case. * * *

"The report of the referee authorized the judgment that was entered, and there is nothing whatever in the record to show that any error has been committed in the trial of the case."

Copper Queen Min. Co. v. Terr. Bd. Equalization of Arizona, 206 U. S. 474, 479.

HOLMES J.; *Arizona Territory;* May 27, 1907.

Question of interpretation of local Territorial tax valuation statute. Board had been sustained by Territorial Supreme Court. Company's contention for a different interpretation was that the statute had been taken from a Colorado statute which had been otherwise construed. Sustaining the Arizona Territorial Court's construction, MR. JUSTICE HOLMES said:

> *"On the other hand, while this Court cannot refuse to exercise its own judgment, it naturally will lean toward the interpretation of a local statute adopted by the local court"* (*citing Sweeney* v. *Lomme; Northern Pac. R. Co.* v. *Hambly;* and *Fox* v. *Haarstick*; supra).

Then, after discussing the question on its merits (p. 479-48), MR. JUSTICE HOLMES concludes (at p. 479):

> "As an original question the construction adopted by the" [Territorial] "Supreme Court appears to us at least as reasonable as the opposite one contended for,"

and then proceeds to discuss the question there further (pp. 479-482), and concludes (p. 428) by affirming the judgment of the Arizona Territorial Supreme Court.

Lewis v. Harrea, 208 U. S. 309, 314.

FULLER, Ch. J.; *Arizona Territory;* February 24, 1908.

Bank receiver's suit to set aside deed made by judgment debtor to his wife, and have the property subjected to payment of the bank's judgment. The deed was made before the indebtedness accrued to the bank; but was not acknowledged until after it had accrued. The Arizona Supreme Court, interpreting the local statute, held that the deed did not become effective as a conveyance, until it was acknowledged. This Court said (p. 314):

> "The construction of the statute by the local courts is of great, if not of controlling, weight." (*Citing Sweeney* v. *Lomme; Northern Pac. R. R. Co.* v. *Hambly;* and *Copper Queen Consolidated Mining Co.* v. *Territorial Bd. of Equalization of Arizona; supra.*)

English v. Arizona, 214 U. S. 359, 361.

MCKENNA, J.; *Arizona Territory;* June 1, 1909.

Tax collection case: District Court's judgment affirmed by Territorial Supreme Court. This court said:

> "The first contention is repeated here, and it invokes our construction of the statutes of the territory against that made by the Supreme Court. If there were doubt, we should certainly lean to the construction given by the Supreme Court". [Citing *Copper Queen* case, *supra*] "But we think there is no doubt".

[But then proceeding non-the-less to discuss the question involved there, on the merits; and to uphold (pp. 361-365) the Territorial Supreme Court.]

Santa Fe County v. New Mexico, ex rel. Coler, 215 U. S. 296, 305, 307.

McKenna, J.; *New Mexico;* December 20, 1909.

Special Tax case:

> "Unless in a case of manifest error, this court will not disturb a decision of the Supreme Court of a Territory construing a local statute". *ib* p. 307.

[This Court manifestly agreed, on the merits, with the Territorial Supreme Court; and proceeded to discuss that Court's decision *on the merits.*]

Albright v. Sandoval, 216 U. S. 331, 339.

McKenna, J.; *New Mexico Territory;* February 21, 1910.

Contest over fees of office of County Assessor; depending on incumbency of office; and upon interpretation of Territorial statute, as to whether residence in the County was a requisite to continuance in holding County office. [New County of Sandoval having been formed, within which Mr. Sandoval was residing, who had theretofore been elected County Assessor of the earlier larger County of Bernalillo, from which Sandoval County was split off]. The Territorial Supreme Court had held continued residence in the County not essential. This Court said (p. 339):

> "And that construction we are not disposed to disturb" (*Citing Fox* v. *Haarstick* and *English* v. *Arizona, supra.*)

Lewers & Cooke v. Atcherly, 222 U. S. 285, 294.

Holmes, J.; *Hawaii;* December 18, 1911.

Appeal from decree of Territorial Supreme Court, refusing registration of title to land devised through an oral will in 1844, reported to the King, as required by the local laws in those days, "and there is evidence that the King disapproved it, because of Kalakaua's youth"; and that

in 1849 the Land Commissioner adjudged the land to Kinimaki in fee simple. After detailing the history, including a decree, in 1858, in favor of Kalakaua, who afterwards became King, and after further dissension, MR. JUSTICE HOLMES says:

> "Acting on this rule, as to the application in practice, we see no sufficient reason for not following the local Court. The" [Territorial] "Supreme Court came to the conclusion that the * * * decree of 1858 was wrong.
>
> "On this point there is every reason for attributing great weight to the decision of the Court on the spot" (p. 294)

Treat v. Grand Canyon R. Co., 222 U. S. 443, 452.

HOLMES, J.; *Arizona Territory;* January 9, 1912.

Tax injunction suit, by railway. The Territorial Supreme Court had affirmed the decree of the District Court; holding the railway exempt under a local ten year tax exemption statute enacted to encourage railroad building, and holding the appellee company, purchaser at foreclosure, entitled to succeed to the exemption. This Court said:

> "No doubt a strong argument can be made and was made for a different view, * * *. But the considerations that prevailed are cogent and so obvious as not to need statement, * * *. The courts of the Territory have given to the railroad the rights that it claims, as against the tax authorities seeking to levy the tax. The only question is whether any sufficient reason appears for not following the construction given to the local statute by the Territorial court, when that construction is inherently reasonable, is at least the first to strike the mind, and is one that protects private rights. It is enough to answer that on the principle followed so far as may be by this Court, there is no such manifest error as to warrant us in reversing the decisions below." [*Citing Fox* v. *Haarstick*, and *English* v. *Arizona, supra*].

Ker v. Coudens, 223 U. S. 268, 279.

HOLMES, J.; *Philippine Islands;* February 19, 1912.

Question of ownership, under the Spanish Law of Accessions, of the shore, by accretion and alluvion; a vexed question,

MR. JUSTICE HOLMES says (at p. 275-276):

> "That the question is a vexed one is shown not only by the different views of Spanish commentators, but by the contrary provisions of modern Codes, and by the occasional intimations of the doctors of the Roman Law."

The Philippine Supreme Court had held (p. 275) that the title to the accretions remained in the Government.

MR. JUSTICE HOLMES, after a full discussion (at pp. 275-279) of Roman, Spanish, French, Italian, Mexican, Chilean, and Louisiana sources, concludes (at p. 279);

> "The court of first instance below refers to judgments of the Supreme Court of Spain that seem to look in the same direction. We have neither heard nor found anything on the other side that seems to us to approach the foregoing considerations in weight, *not to speak of the respect that we must feel for the concurrent opinion of both the Courts below upon a matter of local law with which they are accustomed to deal.*" (Italics supplied)

Clason v. Matko, 223 U. S. 646, 653.

MCKENNA, J.; *Arizona Territory;* March 11, 1912.

Action to quiet title to a mining claim; MR. JUSTICE MCKENNA says (pp. 652-653):

> "The construction of the Supreme Court of Section 3241 of the Revised Statutes of the Territory is attacked. That section required, before its amendment in 1907, that in case of a relocation of a claim * * *.
>
> "The contention is that this section, properly considered, applied only to 'abandoned property' and did not apply to forfeited property, * * *.

"Of course, there may be a distinction between the abandonment of a claim and its forfeiture, but the question does not turn upon the distinction only, but upon what the statute means, considering all of its words; and, considering them all, we think they show quite clearly that no distinction was intended. • • •.

"Even if we should concede that the statute is ambiguous, we should certainly lean to agreement with the Supreme Court of the Territory". (*Citing Fox* v. *Haarstick; Armijo* v. *Armijo; English* v. *Arizona; Santa Fe County* v. *ex rel. Coler* v. *New Mexico;* and *Albright* v. *Sandoval; supra.*)

Gray v. Taylor, 227 U. S. 51, 56-57.

HOLMES, J.; *New Mexico Territory;* January 20, 1913; *County seat fight.* Question, whether attempted change of County seat was void.

After disposing of some objections urged under the Organic Act of Congress, this Court says:

"However it may be as to the foregoing question, which arises under an Act of Congress, the other objections are of a kind as to which we have often intimated our strong leaning toward following the local courts, and therefore will not be discussed at length" (pp. 56-57).

[But none-the-less this Court does actually discuss them (pp. 57-58), and was apparently in accord with the conclusions of the Territorial Supreme Court.]

Cordova v. Folgueras, 227 U. S. 375, 378-379.

HOLMES, J.; *Puerto Rico;* February 24, 1913.

Filiation suit. MR. JUSTICE HOLMES says:

"It is objected that the Supreme Court of Spain has construed the fourth transitory provision otherwise • • •. The construction adopted in Porto Rico at least does no violence to the words of the statute; it concerns local affairs under a system with which the Court of the Island is called on constantly to deal, and

we are not prepared, as against the weight properly attributed to the local decisions, to say that it is wrong." (Citing *Gray* v. *Taylor, supra.*)

Phoenix R. Co. v. Landis, 231 U. S. 578, 579-580.

HUGHES, J.; *Arizona;* December 22, 1913.

Death Case. District Court's judgment affirmed by Territorial Supreme Court, holding that under a local statute the action was for the benefit of the estate, and that it was not necessary for the plaintiff, administrator, to allege or prove the existence of beneficiaries, or the amount of the damages suffered by them,—following its own earlier decisions, in which it had reviewed the history of the legislation.

MR. JUSTICE HUGHES says:

"This court has frequently stated that it is disposed to accept the construction which the Territorial Court has placed upon a local statute" [*Citing earlier cases, supra*]. "The applicable considerations gain in force where, as in this case, the construction of the statute deliberately established and followed, has been reaffirmed upon the eve of statehood; and we are of the opinion that the ruling of the Supreme Court of the Territory of Arizona should not be disturbed."

Santa Fe Central Ry. Co. v. Friday, 232 U. S. 694, 700.

HOLMES, J.; *New Mexico;* March 23, 1914.

Action for personal injuries. MR. JUSTICE HOLMES says (pp. 698-700):

"The only argument addressed to us is an attack upon the jurisdiction of the court that tried the case. * * *

"But it is said that the jurisdiction of these courts was to be 'as limited by law', that that means by Territorial legislation, and that a Territorial statute provided * * *. Thus, it is argued, exclusive jurisdiction of cases like the present was transferred to the County District Courts.

"But it has been held for many years, that the purpose and effect of these statutes was to give the Judges of the Supreme Court sitting in the County District Courts authority to hear cases arising under Territorial laws, * * *. *We should not decide against the local understanding as a matter of purely local concern unless we thought it clearly wrong,* instead of thinking it, as we do, plainly right." (*Citing Phoenix Ry. Co.* v. *Landis, supra.*) (*Italics supplied.*)

Nadal v. May, 233 U. S. 447, 545.

HOLMES, J.; *Puerto Rico;* April 20, 1914.

Error to the District Court of the United States for Puerto Rico. Suit by Rafael Martinez Nadal to establish his title to one-half interest in a plantation, "Carmen", as devisee of his aunt. Question of the effect, under Puerto Rico laws relating to conjugal partnership, of a conveyance by the aunt's husband to a third party. MR. JUSTICE HOLMES says (pp. 453-454):

"Both sides agree that the wife's assent to a conveyance by her husband was made necessary for the first time by section 1328 of the Civil Code of March 1, 1902. Unless that Code went into effect at its date it did not apply to the conveyance of June 2." (*Discussing the history of the enactment of the four Puerto Rican Codes of 1902.*) "It is impossible to know how many or how important tranactions may have taken place on the faith of these repeated solemn assurances, *and apart from the general unwillingness of this Court to overrule the local tribunals upon matters of purely local concern* (*Santa Fe Central Ry. Co. v. Friday,* 232 U. S. 694, 700), it is not too much to say that the decisions have become a rule of property, even if we did not think, as we do, that probably the Secretary's certificate expressed the legislative will." (*Italics supplied.*)

Diaz v. Gonzalez, 261 U. S. 102, 105-106.

HOLMES, J.; *Puerto Rico;* February 19, 1923.

Suit by respondents to establish nullity of a sale of their land while they were all minors. The Supreme Court of Puerto Rico upheld the sale, and ordered the complaint

dismissed (27 P. R. Rep. 364), but was reversed by the Circuit Court of Appeals (276 Fed. 108), following another decision made by it at the same term (*Agenjo* v. *Agenjo*, 276 Fed. 105). This Court granted *certiorari*, reversed the Circuit Court of Appeals, and affirmed the judgment of the insular Supreme Court.

The father of the respondents died in 1904, and the title to the land passed to his widow and children. The land lay in the judicial district of Humacao, in Puerto Rico. The widow obtained authority to make the sale from the District Court of another judicial district [San Juan], and the sale was made. MR. JUSTICE HOLMES said (p. 103): "This suit proceeds on the ground that only the Court of the judicial district where the land was situated had power to authorize the sale of the minors' interest in the land."

Analyzing and comparing various provisions of the Civil Code of Puerto Rico and those of the Code of Civil Procedure, and referring to earlier decisions of the insular Supreme Court, and to comments by the commentators Manresa and Scaevola, MR. JUSTICE HOLMES says (at p. 105):

> "We will not repeat the argument quoted from Manresa and Scaevola that jurisdiction is a matter of adjective law and that the general provisions with regard to it are not repealed by a repeal of the substantive law or change in the Civil Code. 26 P. R. 631, 632. We will do no more than note Manresa's conclusion that although it would be more prudent to apply to the Judge specially designated, any Judge having jurisdiction of this class of cases is made competent by the submission implied from invoking his action. The distinction taken seems to be similar to that which we take between jurisdiction and venue. *Martorell* v. *Ochoa*, 25 P. R. 707, 729. A mistake as to the latter is waived by submission, *Lee* v. *Chesapeake & Ohio Ry. Co.*, 260 U. S. 653, and in the Porto Rican law an *ex parte* application is an adequate submission. This is a perfectly intelligible view, and when we are assured by the Supreme Court that it long has been taken, 28 P. R. 729; 26 P. R. 634; interrupted only by a momen-

tary obstruction caused perhaps by accepting too broadly and absolutely an expression in *Garzot* v. *De Rubio*, 209 U. S. 283, 303, we see no reason for not taking it here. The fact alleged that this interpretation of the law has become a rule of property, 25 P. R. 730, is very important and is not weakened by there being only a small number of decisions on the point. If it has been accepted by the practices of the community it should not be disturbed except upon an unescapable conclusion that it is wrong."

Mr. Justice Holmes then follows this upon with his famous observation, so frequently quoted, that (pp. 105-106):

"This Court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. It is enough to cite *De Villanueva* v. *Villanueva*, 239 U. S. 293, 299. *Nadal* v. *May*, 233 U. S. 447, 454. This is especially true in dealing with the decisions of a Court inheriting and brought up in a different system from that which prevails here. When we contemplate such a system from the outside it seems like a wall of stone, every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have got from the books. In this case a slight difference in the caution felt in dealing with the interest of minors (*Baerga* v. *Registrar of Humacao*, 29 P. R. 440, 442), and a slight change of emphasis in the reading of statutes, explain the divergence between the Supreme Court and the Circuit Court of Appeals. Our appellate jurisdiction is not given for the purpose of remodeling the Spanish American law according to common law conceptions except so far as that law has to bend to the expressed will of the United States. The importance that we attribute to these considerations led to our granting the writ of certiorari and requires us to reverse the judgment below."

Villanueva v. Villanueva, 239 U. S. 293, 298-299.

WHITE, C. J.; *Philippine Islands;* December 6, 1915.

Divorce and Partition of conjugal community property.

CHIEF JUSTICE WHITE, after stating the case, and the assignments of error, says (pp. 298-299):

> "Under these conditions it is apparent that all the errors relied upon * * * in their essence only dispute the correctness of the facts found by both the Courts below and but challenge the accuracy of the principles of the local law which were applied to the facts for the purpose of deciding the cause. Under these circumstances * * * we content ourselves with saying that we are of the opinion, after examining and weighing them all, that they are without merit for the following reasons: (a) Because insofar as they dispute the concurrent findings of fact of both the courts below they entirely fail to give rise to that conviction of clear error which must be entertained in order to authorize a reversal of the findings, *Texas & Pacific Ry.* v. *Louisiana R. R. Commission,* 232 U. S. 338; *Gilson* v. *United States,* 234 U. S. 380, 383-384; and (b) *Because insofar as they challenge the correctness of the application which the courts made of the local law* to the facts in deciding the cause, *they are totally deficient in that persuasive strength which it is essential they should possess in order to produce the conviction that clear error was committed* by the court below, *and thus lead us to depart from the principles by which we follow and sustain the local law as applied by the court below unless we are constrained to the contrary by a sense of clear error committed".* (Citing *Ker* v. *Couden; Santa Fe Ry.* v. *Friday; and Nadal* v. *May; supra.*) (*Italics supplied.*)

Fernandez v. Ayllon y Ojeda, 266 U. S. 144, 146

HOLMES, J.; *Puerto Rico;* November 17, 1924.

Suit to set aside sale of land in Puerto Rico formerly belonging to the respondents (plaintiffs), on the ground that the sale made by their testamentary tutor or guardian was void because his appointment had not been recorded in the registry, and no bond given nor oath taken by him

as required by law. The defendants, the petitioners in this Court, relied upon title by the ordinary prescription of ten years possession under a just title and in good faith. MR. JUSTICE HOLMES says (pp. 145-146):

> "The sale took place under an order of the local District Court having jurisdiction over the minors and over the tutor, but the Circuit Court of Appeals overruling the Supreme Court of Porto Rico held that this was not sufficient to constitute just title, * * *. (p. 145).
>
> "The decision of the Supreme Court of Porto Rico turned upon local statutes and local traditions. The caution to be used before overruling such decisions was emphasized in a recent case where the action of the Supreme Court was open to greater doubt than here. *Diaz* v. *Gonzalez*, 261 U. S. 102, 106. For here apart from the respect due to the local judgment its reasoning commands our assent" (p. 146).

This Court accordingly reversed the Circuit Court of Appeals and upheld the insular Supreme Court.

Matos v. Alonso Hermanos, 300 U. S. 429, 432.

McREYNOLDS, J.; *Puerto Rico;* March 29, 1937.

Action by a purchaser of cattle to have the sale annulled and to recover the purchase money, because the cattle, although apparently in good condition, were suffering from tuberculosis from which some died and because of which others were condemned and destroyed by the Health Department.

The Supreme Court of Puerto Rico in reversing the local District Court had held that the sale contract was not void but was voidable at the purchaser's election; that its legal effect and the remedy for its violation were within local Code provisions relating to "redhibitory contracts"; that a limitation of forty days applied; and "that Section 1397 does not exclude the transaction made in this case from the field of warranties".

The Circuit Court of Appeals held the contract of sale illegal—non-existent—as to the cows which had died or

been condemned; and to that extent reversed the judgment of the insular Supreme Court. A dissenting opinion, however, approved the Supreme Court's construction of the Code, and its judgment, in its entirety [81 F. (2d) 930, 934].

This Court said (p. 432):

> "Manifestly the solution of the controversy must turn upon the meaning and effect of the above quoted sections of the Civil Code—local law of Puerto Rico.
>
> "Considering the argument here, the divergent views below, the authorities cited, and 'recognizing the deference due to the understanding of local courts upon matters of purely local concern,' it becomes impossible for us to entertain 'a sense of clear error committed' by the Supreme Court. Following the view so often approved, we think the Circuit Court of Appeals should have accepted and affirmed the ruling there announced after much consideration. *Nadal* v. *May*, 33 U. S. 447, 454; *De Villanueva* v. *Villanueva*, 239 U. S. 293, 299; *Diaz* v. *Gonzalez*, 261 U. S. 102, 105.

Waialua Co. v. Christian, 305 U. S. 91, 109.

REED, J.; *Hawaii;* November 7, 1938.

Two cases concerning the validity of a lease, a contract of maintenance, and a deed conveying or assigning rights of an incompetent to an undivided interest in land in Hawaii. The Supreme Court of Hawaii set aside the deed, and refused to set aside the contract or lease. The Circuit Court of Appeals for the Ninth Circuit reversed (94 F. (2d) 806).

This Court, after stating the facts (pp. 94-103), the decision of the Supreme Court of Hawaii (pp. 103-105), that of the Circuit Court of Appeals (pp. 105-106), "*The Status of the Supreme Court of Hawaii*" (pp. 106-108), and discussing generally the matter of the "*Review of its Decisions*" (pp. 108-109), concludes (pp. 109-110):

> "While the 34th section of the Judiciary Act is not applicable to territories, the arguments of policy in favor of having the state courts declare the laws of the state are applicable to the question of whether or not

territorial courts should declare the law of the territories with the least possible interference. It is true that under the appeal statute the lower court had complete power to reverse any ruling of the territorial court on law or fact; but we are of the opinion that this power should be exercised only in cases of manifest error. * * *

"In so far as the decisions of the Supreme Court of Hawaii are in conformity with the Constitution and applicable statutes of the United States and are not manifestly erroneous in their statement or application of governing principles, they are to be accepted as stating the law of the Territory. Unless there is clear departure from ordinary legal principles, the preference of a federal court as to the correct rule of general or local law should not be imposed upon Hawaii.

"*Decision of the Supreme Court of Hawaii.*—To adopt the legal principles applied by the territorial supreme court in these cases as rules of decision in that jurisdiction, or to construe instruments as it interpreted them, is not manifest error.

"What ever may be the better rule as to the voidableness of the transfer documents of an incompetent, it is not clearly wrong to select the one here chosen.

"The construction of the contract of maintenance by the territorial court of last resort is likewise defensible. The lower court, itself, said the assignment of rents due to the incompetent 'by virtue of being.... devidee under the will....during the term of the natural life of her' the incompetent (see note 5, *supra*), might mean 'that the ward assigned all rents including those to which she might be entitled under the lease to the company and any other lease.' The minority opinion reached this conclusion. Although on consideration of the entire contract the majoritly reached a different answer, the interpretation of the Supreme Court of Hawaii is not manifestly erroneous. Nor do we see any occasion to re-examine the interpretation that the deed of May 2, 1910 (the relevant portions of which are set out above, *ante*, p. 96), conveyed the rents, issues and profits, assigned to Mrs. Kentwell."

Accordingly this court reversed the decree of the Circuit Court of Appeals, and affirmed that of the Supreme Court of Hawaii.

Sancho Bonet, Treasurer of Puerto Rico, v. Yabucoa Sugar Co., 306 U. S. 505, 509-511.

BLACK, J.; *Puerto Rico;* March 27, 1939.

Sancho Bonet, Treasurer of Puerto Rico, v. Texas Co., 308 U. S. 463, 470-472.

DOUGLAS, J.; *Puerto Rico;* January 2, 1940.

People of Puerto Rico v. Rubert Hermanos, Inc., 315 U. S. 637, 646.

BYRNES, *J.; Puerto Rico;* March 16, 1942.

These three cases are commented upon in the body of this brief (Point I, *ante*, pp. 8-17). Accordingly no comments are made upon them here.